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BUSINESS ETHICS

BASIC CONCEPTS AND PRINCIPLES

Theory and Cases



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Foreword

This book addresses to my students from the Academy of Economic Studies in Bucharest, who study economics in English. It is a textbook, not a treatise on business ethics. Its main purpose is to present briefly and clearly the main topics of this discipline, in a way that can be instructive both theoretically and practically. That is why I tried to illustrate most of the concepts and abstract principles with relevant case studies. This work differs substantially from my previous book on business ethics in English – Business and Morality, issued in 2003 at the same publishing house. That was my first attempt in a foreign language and in this field of research. I like to believe that in the meantime I have made significant progress, both in English and business ethics. The experience accumulated in the last academic years, as well as my subsequent readings and research changed much of my initial views upon business ethics. I hope this new textbook will give my students a more enlightened and useful guide in this important and attractive discipline.

Various reasons made me to plan this textbook on business ethics in at least two parts. This first volume deals with the philosophical basis of business ethics. Contrary to commonsense beliefs, the ethical aspects of business activities cannot approach directly, assuming that we all are familiar with general ethics or moral philosophy. My previous experience proved to me that the basic concepts and principles of ethics are not at all trivial, common knowledge. On the contrary, even the concept of ethics is confuse and controversial. Accordingly, the first chapter deals with several popular meanings of ethics, analyzing both the connections and the differences between ethics and other components of spiritual and social life, such as feelings and emotions, religious faith, traditional customs or legal regulations.

Nor the relationship between ethical standards and business is less confusing. More than a few businesspersons or economists find it difficult to associate ethics and business. In their view, ethics is a personal matter, confined to one's private life, where everybody is free to choose his or her moral standards. Business, on the other hand, is a professional matter, with its own rules and standards of efficiency, which are ethically neutral. The second chapter will try to prove that the very concept of business contains intrinsic ethical implications, most of them connected with the key element of business – profit. Accordingly, the ethical approach of business activities cannot reject as an external, artificial, and disturbing intrusion of ideology and populism in the serious, risky, and competent profit making. Theory and practice prove that moral decency and ethical behaviour in business do not necessarily hinder profit; on the contrary, in the present day economic environment, a good ethical reputation for corporate responsibility represents an important competitive advantage.

One topic that induces serious confusions and errors in business ethics concerns the complementary relation between law and morality. Many business leaders hold that ethical business reduces to legality; any claim that business should keep more than the enacted legal regulations is, in their view, superficial and inconsistent. I tried to deny this position with various arguments – some of them presented in the second chapter, others developed in the third chapter, which deals with the specific of moral norms and values. Starting with a description of the essential elements of norms in general, I used the normative structure to state the key differences between moral rules and legal prescriptions. I have also defined the specific social functions of morality and law to explain why we should keep two distinct kinds of rules in business activities, as well as in any other sector of social life. Analyzing the basic theoretical models of values, I paid a special attention to cultural and ethical relativism, which tends to become the dominant axiological perspective of our times. The merits and the shortcomings of relativism in business ethics can be assessed in the light of the essential distinction between cultural relativism – a descriptive approach, supported with solid, undeniable facts – and ethical relativism, a normative approach, claiming that universal values are impossible and should not exist.

No matter how strong our decision to keep the moral norms and to cherish solid moral values, we confront sometimes complicated situations, which defy our wish to make rational ethical decisions. Quite often, economic agents – investors, managers, shareholders, employees or consumers – wish to do the right thing, but they simply do not know how. There are too many conflicting interest involved, too many practical alternatives, too many uncertain consequences. The fourth chapter presents the most influential ethical theories – utilitarianism, Kantian duty ethics, and Aristotelian virtue ethics. Each one of them builds a conceptual framework and an analytical pattern, which might help in finding strong arguments for the best ethical decision under specific circumstances. These ethical theories cannot answer a fundamental key question: why should one strive to act ethically in business? If one really believes he or she should do ethical business, ethical theories can help in making right decisions in complex situations. What can we say if one simply denies that he or she should try to make profit acting in accordance with some ethical standards?

The fifth chapter tackles probably the most important and no less controversial topic of the so-called “enlightened self-interest.” Based on the logical analysis specific to the game theory, the self-interest approach holds that one shrewd, intelligent business leader should keep ethical standards since “Good ethics is good business.” In a cold, pragmatic, and strictly rational perspective, moral norms and values are not intrinsically worthy; however, paying them respect promises to enhance profit over the long run, since a good moral reputation can attract devoted consumers, stimulate dedicated employees, convince serious suppliers, etc. Applied to competition and cooperation in business, game theory suggest that the best winning long-term strategy should mix competitive aggressiveness and calculated availability for cooperation with different categories of stakeholders. In my analysis, this is a superficial understanding of the last logical and practical consequences of game theory. In fact, enlightened self-interest recommends the immoral cooperation between companies, which are supposed to compete – for their exclusive benefit and contrary to the legitimate interests of consumers, employees, local communities, the state, etc. Besides, one should question if acting ethically in business only for the sake of

maximizing profit is morally worthy. In my opinion, and according to the most influential ethical theories, it is not.

The sixth and last chapter deals with corporate responsibility. This expression became lately a fad and an empty cliché. Everybody speaks of corporate responsibility – be it the case or not. However, this is an extremely difficult concept, which raises more than one tough theoretical and practical question. Truth is that moral philosophy developed a language and a conceptual frame that apply to individual behaviour and personal moral responsibility. It is not at all simple to transfer the classical terminology and conceptual frame to corporations, which are fictitious legal persons, deprived of many components of the individual moral conscience: purpose, intentions, willpower, feelings, etc. This chapter presents the pros and cons in connection with this tricky topic, trying to argue that, within certain limits, we have reasons to speak of corporate responsibility, which contains several forms or levels – economic, legal, ethical, and discretionary or philanthropic.

In my project, a second volume will approach the most significant specific issues in business ethics, such as ownership and management; business and employees; business and customers; environmental issues; international business ethics and global market economy.

But first let's talk about basics.

*Dan Crăciun
Bucharest, 2012*

INTRODUCTION

Business – Okay! Ethics – hmmm... But *business ethics*!!?

There is a lot of fuss about business ethics today. Yet much talk does not necessarily mean deep understanding and genuine knowledge. In the last decades, most economists and business leaders initiated a cult for business ethics, which they expect to change radically the business environment, for the benefit of both companies and society. Yet many ordinary people, critics of modern capitalism, as well as a good deal of businesspersons do not take business ethics very seriously, considering it as an artificial and futile inquiry, almost completely irrelevant to the real business operations and incapable of making a significant difference in our economic life.

Looking for a definition, we might say that business ethics is a relatively new field of research, focused on the specific moral issues of the economic activities. R. T. De George, one of the most prominent authors in this discipline, defines business ethics as “the ethical outlook, whether implied by behaviour or explicitly stated, of a company or individual engaged in business. Behaviour and statement can of course come apart, so that one might say of a certain corporation: ‘Their ethic is allegedly one of service to the community, but their woeful environmental record shows what they really believe.’”¹

In a second sense, business ethics is that set of principles or reasons which should govern the conduct of business, whether at

the individual or collective level.² If we assume there are many ways in which people should not act in business, then business ethics in this second sense refers to the way people should act.

In its final, and most commonly used, sense, business ethics is an area of philosophical inquiry, with its own topics of discussion, specialists, journals, centres, and of course a variety of different ethical positions. In this sense, Roger Crisp claims that, “business ethics refers to the philosophical endeavours of human beings to grasp the principles constituting business ethics in its second sense, usually with the idea that these should become the ‘ethic’ of real business and business people.”³

The mere reading of Crisp’s definition could explain why so many business people are quite sceptical about the relevance of business ethics to their day-to-day problems and practical dilemmas. Instead of making facts look more simple and easy to understand, philosophers seem to speak about another world, dealing with artificial speculations, which have nothing in common with the usual concerns of people engaged in business. Yet this is not quite true. In plain English, the distinguished philosopher from Oxford wants to tell that, as a philosophical inquiry, business ethics seeks to evaluate and to support with reasons the moral values and norms that should govern the economic game, hoping that its explanations will contribute to the improvement of the everyday moral practices in real business.

Fortunately, not all the definitions of business ethics stated by philosophers are so “deep” and hard to understand. In Manuel Velasquez’s words, business ethics is “a study of moral standards and how these apply to the social systems and organizations through which modern societies produce and distribute goods and services and to the behaviours of the people who work within these organizations.”⁴ A shorter definition, proposed by Crane and Matten, lets us know that “business ethics is the study of business situations, activities, and decisions where issues of right and wrong are addressed.”⁵

Perhaps all of these definitions are correct. Nevertheless, they miss something important in the very essence of business ethics, letting the reader more or less confused. "Business ethics" is a complex expression that contains two different words – *business* and *ethics*. These two terms do not come along very well. On the contrary, many people think that business ethics is an oxymoron, a contradiction in terms or an association between two incompatible notions, such as "square circle", "brave coward" or "virgin mother". These people are tempted to idealize ethical behaviour, which they define as total altruism, pretty close to holiness: forgetting about your own interest and caring only about the others. Obviously, it is hard to find such generosity in business activities. On the other hand, they cannot resist the temptation to demonize business, described as selfish, cruel, cynical, and greedy by its very nature. Unfortunately, sometimes reality confirms this dark description, but not always; not even most frequently. Once we started from such premises, it is only logical to conclude that business and ethics are incompatible; therefore, business ethics deserves the ironic label of an oxymoron.

It is not difficult to show that ethical behaviour does not necessarily demands total altruism or that many businesses make an honest and decent profit. So many facts prove it. However, it is difficult to state a clear definition of business ethics as long as neither the word "business", nor the term "ethics" has a clear meaning. Actually, ordinary language and common sense use both words with a lot of different meanings and connotations that create considerable confusion. Hence, I think one cannot articulate a clear definition of business ethics as long as both "ethics" and "business" keep their fuzzy meaning. That is why in the next chapters I shall try to analyze the meaning of the term "ethics" and the ethical implications of the concept of business.

However, perhaps we do not need to begin with a formal, academic definition of business ethics. Maybe it would not be such a bad idea to begin with the common knowledge about it. At first

glance, business ethics might appear as an Anglo-American academic fashion, spreading all over the world, just like Coca-Cola, Levi's blue jeans, Hollywood movies or rock and roll music. However, even in the American universities business ethics is not yet an important field of research and an established academic discipline. After the Enron scandal, the issue of teaching business ethics in the U.S. B-schools raised fiery debates. *BusinessWeek* published an article written by Brian Hindo – "Where Can Execs Learn Ethics?" The author says: "Given the ethical lapses at Enron, Andersen, Sotheby's and Christie's, Merrill Lynch and, most recently, the clouds hanging over Tyco and ImClone, it would seem logical for business schools to put a sharper focus on teaching future business leaders to do the right thing. Sure, most B-schools are loudly condemning such ethical breakdowns. But what are they doing to really combat recurrences of such behaviour? The short answer: Not much."⁶ Shortly after that, in her article "Ethics Is Also B-Schools Business", published by the same magazine, Jennifer Merritt argues the same point. "To clean up ethics in corporations," she claims, "you have to start at the beginning of a career. Business school, that is. At first glance, it might seem obvious: B-schools, like the corporations their grads work for, must do more to promote ethics – everyone says so. And nearly all MBA programs – and increasingly, undergraduate business programs – have added ethics courses to their curriculum, dating back to scandals such as the savings & loan crisis. But a class here and there isn't enough to set future managers on the straight and narrow."⁷

Brian Hindo's article received many enthusiastic letters, expressing the total approval of the readers, even though not all of them agreed with his view. For instance, Patrick R. Rogers, PhD, Associate Professor at North Carolina A & T University, says, "Your premise that ethics should, or even could, be taught in schools of business is questionable at best, irresponsible at worst. Ethics are personal and well defined early in life. The best a

business school can do is to try to get students to consider a broad range of stakeholders in the decision-making process. However, that is a far cry from teaching them right and wrong. Maybe [Enron's Jeffrey] Skilling and [Andrew] Fastow are just bad guys. Of course, maybe if we had just taught them right and wrong while they worked on their MBAs, Enron never would have happened. Come on!"⁸

Maybe those who are sceptical about business ethics have a point and perhaps in some respects this new discipline really is an academic fashion. "Whether as a reaction to the 1980s yuppie culture, or a reflection of the 'caring, sharing' 1990s," says Elaine Sternberg, "business ethics has become fashionable." But quickly she adds: "Unlike hula hoops or Rubik cubes, however, business ethics is not just a passing fad."⁹ Every fashion has its history, and each history has its roots and its meaning. Business ethics was born in the USA, after 1960, as a part or consequence of an ideological debate concerning the essence of capitalism versus socialism. In the United States, the radical left and the orthodox Marxist-Leninist groups have never brought a major influence. At that time, most of the American left-wing intellectuals were not advocating a dogmatic socialist doctrine. Adopting a large variety of critical perspectives, from a classical liberal point of view to anarchist and utopian visions, they were criticizing the post-industrial capitalism as a society dominated by the huge and malefic power of the multinational corporations, accused of considerable social damages and serious violations of justice. The big corporations have taken up the challenge, and started an active defence, trying to prove they were not only innocent, but even the most effective agents of the economic growth and social progress. One might see the roots of business ethics in those left-wing incriminations of the alleged immoral practices of the big corporations, and in the efforts made by the financial giants to clean their bad reputation. At a second glance, one might think of business ethics as an attempt of the big corporations to embellish their public image, proving that managers

and business leaders are not ferocious sharks, obsessed exclusively with maximizing their profits, but good and responsible citizens, deeply involved in social justice and constantly concerned with moral issues.

Even though they might be more or less true, these two characterizations – academic fashion and propaganda campaign of the powerful corporations – are not the only possible ways to define business ethics. No fashion could last so many decades and spread constantly all over the world if it was entirely artificial. The Anglo-American school of economics has a reputation for its pragmatism and business ethics would not have resisted and become a major discipline without a real object of investigation. We have to assume the reality of certain practical and morally significant aspects of capitalist economy that deserve a systematic research and an academic status.

On the other hand, the big corporations would not be interested in convincing the public of their concern for business ethics if the public paid no attention to the moral issues, and if the morality of business were completely indifferent to the ordinary people, attracting only a few members of the academic community. The money spent by the powerful companies on attesting their ethical behaviour proves the existence of a serious and widely spread criticism of their business activities. Exposed by the press, dragged into financial scandals, law suits or even criminal trials, more and more companies began to adopt and to develop their own codes of ethics, meant to consolidate a so-called “company culture”, devoted to a set of stated moral values which must guide the current activities of all the members of a firm.

Therefore, we have to admit that, beyond the academic artificiality of certain scholastic arguments and the interest of the big corporations in improving their public image, there must be a core of real and important questions that keep business ethics alive, as a genuine field of research and debate. Especially the last two decades brought forth spectacular social, political and technological

changes, as well as shifting attitudes and outlooks of the stakeholders of different business activities. Many of the most prominent trends of the 1980s and 1990s focused attention on business ethics, and made it something that businesses ignore at their peril. "Consumerism, 'social responsibility', demographic changes, privatisations, investigative journalism, global markets, environmentalism, management theories [...] all have raised public awareness of business conduct and the need for business to respect business ethics."¹⁰

The actions of governments, for example, have brought business ethics issues into sharp relief. Some of these issues have just become urgent and extremely controversial in our transition to a functional free market economy. In the Western countries, as well as in present Romania, privatisation programmes have required previously government-owned enterprises to conduct themselves more as businesses. In response, they have undertaken large-scale redundancies and awarded their executives sharply increased remuneration. Questions have arisen as to the ethics of such actions, and indeed as to the proper objectives of the enterprises themselves: is it to serve the public welfare or the interest of their shareholders?

With governments attempting to withdraw from sectors they have dominated for decades, questions have arisen more generally as to the extent to which business should fill in the gaps. Hopes that business might support the arts or sponsor invention or further education are of course not new. Relatively new, however, is the transformation of hopes into expectations, and stronger still, into demands: what was once voluntary beneficence becomes now "social responsibility." Also new is the extent to which business is supposed to cure all the ills of society: not just to make safer products or improve employment conditions, but to save endangered species and alter fundamental social attitudes. (Of course, this is a controversial issue only in the West; until now it never crossed our fresh-made millionaires' minds to support art,

invention, healthcare or education – at best, some of them are spending their easy money on sponsoring football clubs, golf courses or boxing fights, while others pretend to be great hunters of wild animals.)

Questions of business ethics have also been prompted indirectly by the action of government, through their effect on the economy. Whereas the boom years of the 1980s raised questions about business profligacy, and the role and legitimacy of takeovers, the subsequent recessions have forced business to make hard choices about cutbacks and layoffs and paying their suppliers. With their very survival at stake in the face of global competition, businesses have had to consider seriously patterns of conduct that have proved notably successful overseas.

Awareness of business ethics questions has also been raised by the growing media attention paid to business. As business has increasingly come to be front-page news, so has business misconduct. At least in this respect, we can be proud of standing in line with the West – Romania had in the last decade its big media scandals but, unlike the West, we are still waiting for our big legal trials.

The actions of stakeholders groups have also made business ethics more important. Increasingly, the best employees in the developed countries are attracted not just by pay and perks, but by job satisfaction, potential for growth, and the ethical character of their employers. With the number of candidates from the traditionally favoured groups expected to decline, a firm's ethical stance may therefore be a key determinant of its ability to attract and retain preferred staff. Whereas past consumer movements concentrated on the qualities of the product, the new trend is to "vigilante consumerism," in which consumption choices take into account the character of the producing firm. Consequently, the firm that wants to attract increasingly critical customers must have a care for business ethics.

Shareholders are also attending to the ethics of companies they own. In "ethical investment" movement, investment decisions ground on companies' attitudes and behaviour, rather than on solely financial criteria. And in both the US and Europe, institutional investors have started to rebel against bad business practice. No longer content to express their dissatisfaction by selling their shares, or limited in their ability to do so by the very size of their holdings, shareholders have started to take an active interest in the way their firms are run, vetoing management proposals and voting out management. Such shareholder activism is spreading worldwide: Western investors in overseas companies are exporting their concerns along with their capital. Therefore, firms everywhere are increasingly liable to assess in accord with the quality of their corporate governance, a key element of business ethics.

An increased focus on business ethics has also been generated by the changing nature of business itself. Business has become more international, complex and fast moving than once it was. New issues have arisen, and the easy certainties of the local club were replaced by a multinational, multicultural context in which standards seem constantly in flux. As a result, even old familiar issues are harder to solve now; businesses must consider explicitly matters that once could take for granted.

Paying heed to business ethics has also been made more essential by changing corporate strategies and structures. Total quality management and organisational process reengineering and benchmarking have all led to traditional practices being overthrown. Layers of management stripped away and hierarchies flattened. As a result, authority has been devolved more widely throughout businesses: key decisions are being made at ever lower levels and by greater numbers of employees. It is therefore essential for everyone in the business, not just the top management, to have a thorough understanding of business ethics; all the employees need to be aware of the organization's key values and

aims, and of how they might implement them in their business's conduct. For business ethics to disseminate throughout the organisation, however, it must be understood first. Understanding is especially important, because the new structures also lead to new complexities – of information management and team assembly and organisation – for which there may be no traditional precedent. For “empowerment” of employees to be successful, a proper understanding of business ethics is vital.

These are the most significant changes that made business ethics to become an important area of research, debate and controversy. Yet the specific problems of business ethics are not always obvious. They must be looked for, found, defined, and refined. Pursuing its inquiry, business ethics still has to meet several challenges, all meant to argue its futility and its lack of relevance, on different grounds.

One serious challenge is the widespread idea that ethical conduct in business means nothing more than doing legal business. Too often I met Romanian and foreign politicians, officials or business leaders seriously concerned with business ethics. But their speeches were exclusively focused on bribery, tax evasion, theft, politically manipulated bids, suspect privatizations, price gauging, damages caused to the natural environment – in a word, *illegal* deeds committed by individuals or companies. Of course, we can assume that people doing such things in their business activities are, more or less, immoral persons. We can think as well that law prohibited such deeds precisely because they are unethical. As we shall see, there is a strong and essential connection between legal regulations and morality in business, but this does not mean that keeping the law and acting ethically is one and the same; nor vice versa. Business ethics is not primarily concerned with illegal deeds committed by individuals or companies in their business activities. The legal system is responsible to disclose, judge, and punish those business decisions and acts that breach the legal regulations. As the next two case studies clearly show, the specific topics of business

ethics lie beyond the limits of the law, within the realm of practical alternatives which are all legally permitted, but which do not stand equal from an ethical point of view.

SEIZURE OF S. W. PARCEL

The European Petroleum Consortium (EPC) is a major European oil company with several affiliates and subsidiaries in the U. S. In November 1983, EPC leased three contiguous parcels of land near Chico, California – exactly 300 acres, subdivided into three distinct units of 100 acres – from a wealthy farmer, Mr. Buck Wheat, who owned the property. The parties signed three oil and gas leases, one for each of the three contiguous parcels, which were labelled N.W., S.W., and N.E. because of their geographical location.

Within a year, a significant gas-producing well has been drilled on the S.W. property, and Mr. Wheat earned in excess of \$500,000 in royalties from this well. He was already a multimillionaire by virtue of other wells that oil and gas companies had long operated on his property.

Under the terms of the lease, EPC had the option to extend the lease under the original terms of royalty payments for as long as oil or gas were being produced on any parcel of the land that has been leased. If production ever ceased for a period of one year, the agreement would be invalid. If there were no producing wells on a parcel and EPC wished not to extend the lease on that parcel, EPC was required to file a quitclaim deed (a deed of conveyance that is a form of release of rights) to this effect.

In November 1988, five years after the initial agreement, the lease was scheduled to expire. EPC notified Mr. Wheat by a phone call 90 days prior to the expiration date of the lease of its intention to extend the lease on one parcel of land, the S.W. parcel, but not on the other two. Mr. Wheat responded that he naturally was pleased that royalty payments would continue. Under the terms of the lease, EPC had 30 days beyond the date of expiration to record the quitclaim deed with the county and to record the continuation of the lease arrangement. Twenty-two days beyond the expiration date, EPC did file both the quitclaim and the extension, and 29 days beyond the expiration date an EPC official had a copy delivered to Mr. Wheat by a messenger service.

Thirty-one days beyond the expiration date, Mr. Wheat signed an oil and gas lease on all 100 acres of the producing S.W. parcel with Oklasas Oil Company, a small independent headquartered in Anadarko, Oklahoma.

That is, Mr. Wheat leased to Oklasas the very same S.W. parcel on which EPC believed it had an exclusive lease. Obviously two leases to competitors on the same property cannot be valid.

Mr. Wheat's new lease of the S.W. parcel and his rapid change in relations with EPC were the result of an inadvertent clerical error and the enterprising activities of Mr. B. Sly, president of the Oklasas Oil Company. He devised a method of acquiring land that is highly unconventional, but that has thus far paid off handsomely. He hired a low-salaried clerk to go into several California counties known to have a large number of producing gas wells. The clerk checks all the leases that have been filed, looking for technical violations of the law or for lease loopholes. Whenever a technical violation or potential problem is found on the lease of a producing property, Mr. Sly contacts the owner of the property and makes a lease offer that exceeds the terms found in the original lease. Mr. Sly can afford to give the property owner a much larger percentage of the royalties than is conventional, because he has no drilling costs and encounters no real speculative risk in an industry filled with drilling risk.

Only about 15 percent of the landowners are willing to meet and discuss the possibility of a lease with Mr. Sly, because most believe they have a prior commitment to the company with which they have signed an agreement. About 10 percent renegotiate with the company with which they originally signed the lease; they often use Mr. Sly's offer as a way of obtaining better terms in the new lease, although they do not negotiate terms as favourable as Mr. Sly's. Instead of providing the landowner with the standard one-sixth royalty share, Mr. Sly offers one third, doubling the owner's royalties overnight.

Mr. Sly has been able to sign agreements with approximately one third of the 15 percent who are willing to meet with him. Thus, he eventually comes to terms with about 5 percent of his contacts. His clerk finds one promising legal problem or technical violation that suggests an invalid lease for every nine days of full-time research. Mr. Sly is already bringing in over \$3 million annually for Oklasas from the wells he has acquired on these properties and his operating costs are extremely low because he only obtains properties with producing wells.

Fortunate for Mr. Sly, his clerk was working in the county offices on the day EPC filed its quitclaim deeds and extension. The clerk's trained eye detected a serious error almost immediately: EPC had inadvertently quitclaimed the S.W. parcel and extended the lease on the nonproducing N.W. parcel. This error resulted from a slip of the pen; the clerk at EPC had written "N.W." on the form rather than "S.W." Although EPC had a system

that was set up to avoid such "erroneous legal descriptions," the error passed through six checkpoints in six offices at EPC without detection.

Within two hours of the clerk's discovery of the misfiling in the county office, the relevant papers had been copied and sent by overnight mail to Mr. Sly. Two days later, he was in California to pay a visit to Mr. Wheat. After a two-hour meeting, they were joined by their lawyers for a lunch and afternoon meeting and by 5 P.M., an agreement had been signed. Neither party had contacted EPC to ascertain whether a mistake had been made, but it was too obvious to them that a mistake had indeed been made.

Mr. Wheat asked not only a one-third royalty share but also that Mr. Sly lease, for a sum of \$7,500 per year, the N.E. property that had been quit-claimed, and drill on that property. (EPC had said several times that it was not interested in drilling on this property after it had discovered gas on the S.W. property.) Mr. Wheat also asked for a full indemnification in the event of a lawsuit by EPC. That is, he asked to be fully secured against loss or damage in the event of a lawsuit over the leases, including any loss from the shutdown of operations at the well. Mr. Sly agreed that he would pay all legal costs and reimburse for any loss that Mr. Wheat might incur.

This was not a difficult decision for Mr. Sly. In oil and gas leases, the written record is everything so far as the law is concerned. One simply cannot tell the legal status of the property unless there is a written legal record. Unrecorded statements of intention and verbal promises count for nothing. Mr. Sly's lawyer was certain that no suit by EPC would stand a chance of success. The next day lawyers notified EPC of the new arrangement and told it to abandon the property immediately. Within 24 hours, EPC replied that it considered the negotiations over this property to have been in bad faith. EPC said it considered any entry upon the land and any drilling to constitute a trespass committed in bad faith. EPC added, however, that it was willing to negotiate and settle out of court, because it was responsible for the clerical error. Oklasas replied immediately that it was not interested in negotiation.¹¹

PLASMA INTERNATIONAL

Mr. Soi Levin was a successful stockbroker when he founded Plasma International Company. Recognizing the world's need for safe, uncontaminated, and reasonably priced whole blood and blood plasma, Levin and several of his colleagues pooled their resources and went into business. Initially, most of the blood and plasma they sold was purchased

through storefront operations in the southeast United States. Most of the donors were, unfortunately, men and women who used the money obtained from the sale of their blood to purchase wine. While sales increased dramatically, due to an innovative marketing approach, several cases of hepatitis were reported in recipients. The company wisely began a search for new resources.

Recognizing their own limitations in the medical-biological side of their business, they recruited a highly qualified team of medical consultants. The consulting team, after extensive testing, and a worldwide search, recommended that the blood profiles and donors characteristics of several rural West African tribes made them ideal prospective donors. After extensive negotiations with the State Department and the government of the nation of Burami, the company was able to sign the agreement with several of the tribal chieftains.

The Sunday headline in the Tampa, Florida, newspaper read, "*Blood Sales Result in Exorbitant Profits for Local Firm.*" The story went on to relate how the Plasma International Company, headquartered in Tampa, Florida, purchased blood in underdeveloped countries for as little as 90 cents a pint and resold the blood to hospitals in the U. S. and South America. A recent disaster in Nicaragua produced scores of injured persons and the need for fresh blood. Plasma International had 10,000 pints of blood flown to Nicaragua from West Africa and charged hospitals for \$150 per pint, netting the firm nearly 1.5 million dollars.

Stirred by the newspaper story, a group of irate citizens, led by prominent civic leaders, demanded that the City of Tampa, and the State of Florida, revoke Plasma International's licenses to practice business. Others protested to their congressmen to seek enactment of legislation designed to halt the sale of blood for profit. The spokesperson was reported as saying, "What kind of people are these – selling life and death? These men prey on the needs of dying people, buying blood from poor, ignorant Africans for 90 cents worth of beads and junk, and selling it to injured people for \$150 a pint. Well, this company will soon find out that the people of our community won't stand for their kind around here."

"I just don't understand it. We run a business just like any other business; we pay taxes and we try to make an honest profit," said Soi Levin as he responded to reporters at the Tampa International Airport. He had just returned home from testifying before the House Subcommittee on Medical Standards. The recent publicity surrounding his firm's activities during the recent earthquakes had once again fanned the flames of public opinion. An election year was an unfortunate time for the publicity to occur. The politicians and the media were having a field day.

As Levin reviewed these facts, and the many costs involved in the sale of a commodity as fragile as blood, he concluded that the publicity was grossly unfair. His thoughts were interrupted by the reporter's question: "Mr. Levin, is it necessary to sell a vitally needed medical supply, like blood, at such high prices especially to poor people in such a critical situation?" "Our prices are determined on the basis of a lot of costs that we incur that the public isn't aware of," Levin responded. However, when reporters pressed him for details of these "relevant" costs, Levin refused any further comment. He noted that such information was proprietary in nature and not for public consumption.¹²

Both cases have one important feature in common: the situations described involve no legal faulty – both Mr. Sly and Mr. Levin do legally clean businesses and there is no issue to be set up in a court of law. Yet, some people would strongly claim that we are dealing in both cases with unethical, morally "dirty" businesses.

Nevertheless, there are some significant differences between these two cases. On the one hand, most people would say that Mr. Sly is a petty crook and a cynical profiteer. Nor Mr. Wheat appears to deserve a prize for morality. It is important to remind that only 5 percent of the landowners contacted by Mr. Sly eventually agreed to sign a new contract with him, betraying the companies with which they had signed an original contract.

When we analyze the Plasma Int. case, things seem more complicated. We can expect that some people (I cannot tell how many) will vigorously blame this operation, considering that selling a vital medical product for huge profits to people in misery and despair is deeply immoral. Yet other people will state an opposite opinion, considering that Mr. Levin is a smart and competitive investor. Even though Levin is probably not an example of morality, he discovered a real social demand for uncontaminated blood and plasma, he entered an open market, and he succeeded in legally make an exceptional profit. After all, as Mr. Levin declared, it's just a business like any other business, having as purpose to maximize profit by means of satisfying a real solvable demand.

The above two cases suggest a few important statements. First, there is a difference – sometimes even a conflict – between the legal regulations and the moral standards people consider when make a judgment and evaluate the behaviour of business people or organizations. This difference between the legal and ethical standards represents the most important ground of business ethics, both as an academic discipline, public debate issue, and business practice. People expect that business should keep the law, but they also wish to be part of an economic system where companies also keep certain moral standards.

Secondly, most often people disagree in their ethical judgment of different business situations. The ethical theory must prove either that ethical judgment is strictly subjective, personal, and arbitrary – pure matter of taste – or that there are some objective principles and rational arguments capable to ascertain that some judgments are valid, whereas other viewpoints are false.

Generalizing too quickly the previous two cases may suggest that ethical standards play no significant role in business environment. Even if ethical theory could prove certain truths, they are irrelevant in practice. After all, Mr. Sly is free to keep on doing his dirty business as usual; even though not many people accept his unconventional methods, he still can make quick and easy money in his dishonest way. As for Plasma International, as long as the authorities take no legal steps to restraint his business, Mr. Levin is free to keep on squeezing sordid profits out of despair and misery. Therefore, one might think, business ethics cannot be more than an academic discipline or a topic for media scandals. Yet this would be a wrong idea. More and more often, ethical disapproval from the public opinion entails real and serious consequences for the profitability of business. Therefore, besides strict legality, companies must consider certain ethical standards, whose defiance and contempt could seriously hinder profit. Let us see two other case studies that lead to opposite conclusions.

THE NESTLÉ INFANT MILK FORMULA

In the 1970s, Nestlé Corporation operated a vast marketing strategy, planned to extend bottle-feeding of newborn babies in the market of poor countries. One standard technique was advertising on billboards and in magazines. A second was the distribution of free samples in hospitals to new mothers as well as to doctors. In themselves, these and other practices were neither illegal nor unethical. Yet their use led to charges of following unethical practices and to a seven-year worldwide boycott of all Nestlé products.

The basis for the complaints was misuse of the products. Many of the women who received samples were poor. When they returned home to their villages, they were unable to buy sufficient quantities of the formula. In the meantime, their own breast milk had dried up. Hence, they stretched formula, diluting it to make it go further. In addition, they often used local, unsterilized water to mix the formula. The overall result was an increase in infant malnutrition and mortality.

Critics blamed the manufacturers of the infant formula, and particularly the aggressive marketing techniques. Specially, critics charged that the ads for the product frequently showed white women feeding their infants the milk formula from a bottle, thereby sending the message that to be up-to-date, modern mothers should bottle-feed rather than breast-feed their babies.

Breast-feeding, however, was preferable from a health standpoint. If the mother had a sufficient supply of breast milk, the critics maintained, she would not have to worry about buying or stretching the formula, or about contamination from water. At the same time, they said, she could transmit some of her antibodies to help the infant fight disease rather than introduce disease with the contaminated water.

Furthermore, mothers been given free samples immediately after giving birth, were more inclined to bottle-feed than to breast-feed their newborns. The company knew that the mother's milk would dry up and that the mothers would be dependent on the formula when they returned home.

In addition, the representatives of the company who went through the wards giving out the samples wore white, and so the mothers easily mistook them for nurses. Therefore, they were more prone to accept and use the formula than if the distributors could easily be identified as salespeople.

Because the techniques used by the distributors were not illegal, a group that called itself INFACOT organized a boycott to apply moral

pressure on the infant milk formula companies to change their marketing techniques.

The group targeted the Nestlé, a worldwide corporation based in Switzerland. INFACT asked the consumers refrain from buying any Nestlé products until the company changed its practices. The boycott, which lasted seven years, ended in January 1984. In the meantime, the World Health Organization developed a Code of marketing of Breast-Milk Substitutes, which Nestlé and other companies agreed to follow.¹³

TYLENOL REBOUND

Tylenol is an analgesic introduced in the late 1950s by Johnson & Johnson's pharmaceutical division, as an alternative to aspirin. In September 1982, seven people died in the Chicago area, after taking Tylenol capsules, previously injected with poison (cyanide). Before the incident, the drug produced by J&J detained 35.4 percent of the analgesic US market; after the tragic incidents, the market share sank to 18.3 percent, and the stock market value of the giant J&J, New Brunswick, N.J., fell down.

James Burke, Chairman and chief executive, and his team of top managers immediately decided to recall the product: 22 million bottles. At the height of the crisis, the head of a large advertising agency said: "It's easier to turn wine into water than to bring back Tylenol. It's dead". The crisis went deeper and deeper, as people feared copycat crimes. The entire over-the-counter drug market was threatened.

A task force has been immediately empowered to redress the situation. The first measures taken were: two lots of Tylenol capsules have been pulled off the shelves in Chicago; J&J halted all advertising of the product; on the next few days, capsules were taken off shelves across the country. Compton Advertising ran newspaper ads 10 days after the tragedy, offering to swap Tylenol tablets for Tylenol capsules. As a result, the whole country realized the danger was not in tablets, but only in capsules, so the response was good.

The task force, led by James Burke, initiated some strategic measures: a research program for developing a new tamper-resistant packaging of the capsules; market strategies to rebuild the brand: coupons for consumers, discounts for retailers, etc.; figuring out the type of advertising to employ once the crisis was over.

The advertising campaign was produced by the heads of Compton Advertising: Richard Earle, senior vice president and creative director, and Thomas Lom, senior vice president and managing supervisor. One campaign idea was rejected from the start: to put the drug on the market under a new name. The press could disclose this dirty trick, with catastrophic consequences for the reputation of J&J.

The company obtained a letter from the Food and Drug Administration (FDA) stating that the agency was satisfied that there had been no criminal tampering with the product at the plant in which Tylenol was manufactured. J&J widely exhibited the FDA letter to the press to try to erase the doubts.

The counterattack began with an ad stating the intention of J&J to come back with Tylenol, this time absolutely tamper-proof. The issuing of this ad has been carefully prepared, and it was casted only after one month. The proper moment was vital; the wrong moment would have entailed contrary effect.

The company began to conduct man-on-the-street interviews to get a good reading of the general mood of the country. Over the next four weeks, more than 800 people have been interviewed in 15 cities. The enquiry found little negative feeling against the company itself. Many said they would buy Tylenol again if it were packaged in tamper-proof containers.

After repeated rephrasing, the ad has been run in roadblock – the same hours, on all the channels. The ad featured Dr. Thomas Gates, medical director of McNeil Consumer Products, subsidiary that produces the analgesic. A symbol of reliability, Gates urged trust in the product, and promised tamper resistant containers. After a week, Burke called a press conference, announcing that Tylenol will be back on the shelves, triple sealed, in tamper-resistant capsules. Burke spoke in New York and in other 29 cities, stating that J&J will not accept to be destroyed by a “terrorist” act. The leaders of J&J appeared in all the talk shows where they have been invited. The public reacted in a favourable fashion.

The immediate losses of J&J were huge, due to several factors: the recall of the product; the costs of advertising; massive investments in developing the new tamper-proof packaging technology, subsequently adopted by all drug manufacturers. It was a plight that would have sunken a smaller and lesser diverse company than J&J. If Tylenol had been its lone product, the story probably would have been different. As it was, J&J took a \$100 million pre-tax write-off on the Tylenol losses in 1982. Tylenol contributed an estimated 7 percent of J&J's worldwide sales of \$5.4 billion and between 15 and 20 percent of its profits of \$467.6 million in 1981.

However, the compensations over the long run were substantial. In less than a year after the height of the crisis, J&J took back almost entirely its market share on the American analgesic market. Consolidating J&J's reputation for integrity and social corporate responsibility, the management of the crisis ended up with half of the American families using Tylenol as a general analgesic. During the next decade, the brand Tylenol sold extremely well. The good reputation of the corporation, consolidated by the responsible management of the Tylenol crisis, positively influenced the sales of the other products of the company.¹⁴

These two cases show a completely different reality: far from being a simple rhetorical exercise, the ethical behaviour of companies has direct consequences on their long-term profitability. The boycott of its products has cost Nestlé more than any legal sanction, proving that consumers possess a terrible weapon to retaliate against those companies that defy their ethical standards. On the other hand, the sacrifices and short-term losses of Johnson & Johnson Corporation proved to be a winning strategy, an investment in good reputation and public image that rewarded the company with the trust and fidelity of the consumers. Practice shows that ethical conduct in business play a major role in the evolution of companies; therefore, we have reasons to think that business ethics has an undeniable practical relevance, beyond rhetorical exercise or academic investigation.

This practical relevance could and should be considerably enlarged and improved by a significant progress of the theoretical approach of business ethics. I think such progress depends on a clear and correct understanding of what ethics means. The next chapter will try to show that, contrary to common knowledge, ethics is not that easy to define.

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THE MEANING OF ETHICS

Come on, don't we all know what ethical behaviour is?

Just like medical or legal ethics, business ethics is an applied ethical theory. More precisely, the concepts and methods of ethics, as a general theory, are invoked in dealing with the specific issues of a certain field of activity, such as health care, law and legislation or business.

But what is the meaning of the word "ethics"? A few years ago, sociologist Raymond Baumhart asked around one hundred business people, "What does the word ethics mean to you?" Among their replies, the most common were the following: (1) "Ethics has to do with what my feelings tell me is right or wrong." (2) "Ethics has to do with my religious beliefs." (3) "Being ethical is doing what the law requires." (4) "Ethics consists of the standards of behaviour our society accepts." (5) "I don't know what the word means." These replies might be typical of our own. The meaning of the word "ethics" is hard to pin down, and the views many people have about ethics are shaky.

Ethics and feelings

Like Baumhart's first respondent, many people tend to equate ethics with their feelings. In other words, our ethical decisions are not essentially rational. They come out of our emotional states of mind. Ethical behaviour is rooted in our sympathy directed towards

our neighbours. As ethical persons, we take always the path indicated by our altruistic emotions that make us forget about our selfish interest and care about the needs, wishes, desires, and dreams of the other people. No doubt, feelings play an important role in our ethical conduct. However, being ethical is clearly not a matter of following one's feelings. A person following his or her feelings may recoil from doing what is right. In fact, feelings frequently deviate from what is ethical.

Feelings are very subjective, intimate psychological processes. Different persons may experience opposite feelings towards the same situation, individual, activity, institution, ideology, etc. For instance, some people enjoy violent sports, bullfights or dogfights. Other people, on the contrary, are horrified and disgusted with such bloody entertainment. Some people sympathize with the victims of murderers and feel comfortable with the death penalty. Other people are terrified with the idea of doubling one illegal murder with a second, legal one. If we take feelings as the roots of ethical behaviour, we must accept different ethical codes, all valid as long as different groups of people experience positive emotions towards each one of them. However, we all know since our childhood that ethical rules are not strictly personal; they belong to a whole community.

There is more. We cannot control the dynamics of our feelings. They come and go as they like it. One can learn in time to control the external expression of her inner emotions, not letting the others to read on her face or in her body language like in an open book how she really feels about a specific situation. However, one cannot decide what feelings he shall experience today in the morning, at noon, and in the evening. Emotions take over our soul, whether we approve of it or not. This fact entails several consequences that contradict our elementary experience about ethical behaviour. First, it is possible that one person has opposite feelings, in different moments, towards the same situation. This morning, let's say, I am in a good mood; consequently, I love

everyone around, I am generous, sympathetic, and ready to see something good in all my subordinates. Tomorrow, however, I might be in a bad mood; as a result, I hate everyone around, I am aggressive, critical, and ready to see only the negative traits in my subordinates. If we take for granted that feelings are the foundations of ethical conduct, then we must conclude that the same person might have different ethical codes on different moments and situations. Obviously, this is a terribly wrong idea. I know that, from an ethical point of view, I should treat all my subordinates fairly, no matter whether I enjoy it or if I dislike doing that.

Secondly, since one cannot control the psychological dynamics of his feelings, one is not free to decide how he will react emotionally to different challenges in real life. I simply cannot force myself to like a certain person, business partner or political leader. Yet I am supposed to treat that unpleasant person in accordance to certain general, objective standards, which equally apply to any person, whether I like her or not. As we shall see in more details in a different context, free will is the foundation of ethical behaviour. What simply happens and one free agent cannot control is ethically irrelevant. No one holds responsible for something he or she cannot decide to occur or not. To be more specific, I am not to blame for my hostility towards a certain person; it is a feeling that I am not able to stop or instantly change. Nevertheless, I am to blame if acting in accordance to my hostility I fail to treat fairly the object of my negative emotions.

Finally, if ethical decisions were a simple matter of taste, then it would be completely irrational for the people to argue upon ethical matters. If abusing little children or protecting the natural environment were just personal preferences, like soccer or lawn tennis, no one could ever prove rationally that one preference is right whereas the other is wrong. However, when it comes to serious ethical issues, people do not hesitate to defend their beliefs with arguments, trying to convince people with opposite beliefs to

change their opinions. To conclude: feelings and emotions cannot be the supreme judge of right and wrong.

It would be a mistake to think that people who asserted this view are stupid and ignorant. There must be some truth in their thinking. The emotional approach starts from two premises. First, the Western culture and civilization developed in the last centuries an individualistic and rationalistic perspective on human nature and society. According to this vision, each individual acts motivated by self-interest, and reason is the best instrument of it. In other words, when led by reason, we always care about our own self-interest, trying to obtain maximum benefit for ourselves, acting like a shrewd chess-player. This premise is partially, at least, false. On the other hand, people assume that ethical behaviour must be more or less generous and altruistic, considering the legitimate interests and needs of the others. This second premise is true. If we take for granted these two premises, then it is only logical to conclude that feelings must be the guide of ethical behaviour. Since mind is "cold" and focused on selfish interest, caring about the other people can be rooted only in the heart, which is "warm", sympathetic, and open to our neighbours.

Feelings are indeed an important source of psychological energy. Sometimes they really urge us to act ethically right, but not always. Unfortunately, feelings are morally blind. Love, for instance, is probably the noblest and most generous feeling. Normally, under the spell of love, we are ready to give to the beloved one the best we can and all we have. Yet on occasion one can be irresistibly attracted by his brother's wife or a schoolgirl in the neighbourhood. One married professor can fall in love with one of his or her students. One executive might be charmed with his young and pretty secretary, etc. The feeling is equally intense, but considering the circumstances, it does not lead to ethical behaviour. Usually, hate is a bad feeling, because it urges us to do harm to other people who might not deserve that. Nevertheless, when directed against a dictator, a foreign conqueror or a corrupted

leader, hate can lead to right actions, praised in the history books as heroic acts.

To sum up, I think that we must reject this emotional definition of ethics. Without denying that feelings do play a part in our moral life, there are good reasons to think that feelings are not the essence of ethical behaviour.

Ethics and religion

No one can seriously deny several facts. A considerable number of people still perceive religious faith as the foundation of morality. Moreover, most of the great religions of the world set high ethical standards and provide intense motivations for ethical behaviour. Finally, for many centuries religion has been the axis of spiritual life, bearing a very strong influence upon the entire spiritual life in different societies. The essence of this view found a classical expression in the famous novel *Karamazov Brothers*, by Dostoyevsky. Dmitri Karamazov said, "If there were no God, everything would be permitted." This frequently quoted statement implies at least two ideas: first, that religious faith is the sole and necessary foundation of morality; secondly, there is a one-way connection between religion and ethics – only faith influences morality, not vice versa. We can object both ideas.

It is also an undeniable fact that, in the contemporary world, many people do not believe in God or cherish a faint, weak, and inconsistent faith in one abstract, philosophical perfect, but impersonal, Supreme Being. Nevertheless, ethics applies as much to the behaviour of the atheist or agnostic as to that of the saint. There are true believers who commit sins, hoping that in His infinite mercy, God shall forgive them if they sincerely repent. There are many people who do not believe in God but, at least some of them, are extremely ethical persons. Therefore, it is not

true that, in the absence of religious faith, one person cannot act ethically. Morality is not necessarily rooted in the "fear of God."

The great religions of the world separate through antagonistic theologies and rituals. Nevertheless, they all support compatible, in great part identical, ethical codes. The basic moral teachings of these religions are practically the same, all summarized by The Golden Rule. This second undeniable fact suggests that moral rules base on certain secular necessities of social coexistence of human beings. For a long time they have been strengthened as religious commandments, of divine origin. Nowadays more and more people give up religion, but not morality, as long as they are capable to understand rationally that certain things are wrong, and other things are worthy to do for every mature, responsible, and free person.

It would be also wrong to think that only religion bears influence upon ethics. In fact, there has always been a two ways connection between faith and morality. Religion is not the only active factor in its connection with morality. The specific *ethos* of a cultural community bears its influence upon the religious faith, giving it a particular flavour and a specific direction. In fact, all the Christians read the same book – the Holy Bible. Yet each one of the major Christian confessions read different pages of the book more frequently, and even when they read the same page, each confession takes out different, when not opposite, teachings. For instance, the *theological* meaning and value of work is not the same in all Christianity. In the Eastern Church, work is the divine punishment for Adam after the original sin. There is nothing noble and holy in work. On the contrary, work is a painful reminder of the original sin, to be forgiven by God and forgotten by man after redemption. Humility is the cardinal virtue in the Orthodox confession and work marks an infinite difference between God and humans. Man has to work to survive, but all he can do to reach Heaven is to pray and beg for the divine mercy, turning his face from the temptations of the secular world.

Under the leadership of Pope, the Roman Catholic Church developed a missionary confession set up to build *De Civitate Dei* – God’s kingdom on Earth. The Catholics conquered huge empires, bearing the Bible and the cross in one hand, and the sword in the other. They baptized the “savages” and the “barbarians”, disciplined and subdued kings and emperors. They have built impressive cathedrals and monasteries, but also libraries, universities, and hospitals. In the Roman Catholic Church, work dedicated to God – *ad maiorem Dei gloriam* – is highly evaluated. However, humble work for survival or commercial activities for money are, like in the Eastern Church, depreciated.

The Protestants read the Holy Bible with a fresh eye. The first Book, Genesis, tells the cosmic story of God who worked hard to create in six days the whole world and mankind. Honest work is the best way to imitate and glorify God. It is highly appreciated as similarity with God, not as separating difference. The followers of Calvin adopted St. Augustine’s doctrine of predestination: God decided from the beginning of time who shall be relieved and who shall burn forever in hell, but He does not let us know what’s going to happen to us until Doomsday. However, even if one cannot be certain about his fate while still alive on Earth, one can read certain signs of divine protection, that give some hope for the afterlife in Heaven. In the Protestant world, honest work is the best source of hope: success in business is not associated with the devil – on the contrary, making money through hard and honest work could be a sign that Providence is on our side.

None can rationally prove that one of these Christian confessions is better than the rest from a theological and metaphysical viewpoint, but everyone can see how well or how bad each one of them managed to build a progressive, dynamic, and efficient society and economic system. Our point here is the fact that different races, ethnic communities and cultures receive the same religious teaching, but each one assimilates and puts into practice that teaching in a very specific, unique way. I believe the

differences are rooted in the particular moral profile of each cultural community, in the so-called *ethos*, which precipitates the specific historical experience of a cultural area and which has secular origins.

To sum up: there has been indeed a close and strong connection between religion and morality along many centuries. Even today, for a good number of people ethical behaviour still is rooted in their religious faith. Yet this does not mean that ethics is an appendix of religion. Its specific essence must lay elsewhere.

This does not mean that moral rules with a religious foundation did not play an important part in business environment, as they still do. Since their inception, the world's great religions have been preaching the need for ethics in business. Holy books contain warnings about wealth accumulation for its sake and on the behalf of exploited, unfairly treated people. All seem to equate business success and excessive greed for money with eternal damnation.

For example, the Bible's Book of Exodus (23:6-8) states: "Thou shall take no bribe, for a bribe blinds the officials and subverts the cause of those who are in the right." And Ecclesiast (5:12) warns against too much business success: "Sweet is the sleep of the labourer whether he eats little or much; but the overabundance of the rich will not let the rich sleep." The Islamic holy Book, the Koran (Surah CIV) singles out the immoral businessperson for one-way trip to hell. "Woe to every slanderer, defamer who amasses wealth and considers it a provision against mishap. He thinks that his wealth will make him immortal. Nay, he shall most certainly be hurled into the crushing disaster." The Jewish Talmud discusses what types of questions people are asked by God after their deaths. The very first question, says the Talmud, is "did you conduct your business affairs with honesty and integrity?"²

Yet Yahweh did not forbid the Jews to lend money for interest – what in the old times people called usury. According to the Gospels, Jesus blamed usury as a mortal sin. So did Muhammad

and the Koran. In the Dark Ages, both Christians and Muslims forbade the Jews to own land or to practice different crafts and trades. But in a world where Kings and Emperors could not read and write, the Jews were literate, can do arithmetic, and keep financial records. Since for them dealing with money was not a sin, the Jews became the bankers of Europe and Islam. They still keep a dominant position in the banking industry. The Muslims still respect the Prophet's interdiction of usury; consequently, there are very few and significant Islamic banks. The Arabs possess a key resource of the modern world – crude oil and natural gas, which they massively export for huge amounts of money. That money goes to the Western banks and investment funds, most of them owned and managed by their foes, the Jews. The Jews cannot use the bank accounts of the Arabs as weapons against their enemies because they need the protection of the Western powers and the USA, and these countries desperately need the Arab oil. See how religion, politics, and economy mix up in contemporary world.

Ethics, mores and tradition

Some people make no difference between ethical rules of conduct and traditional customs, specific to a certain cultural community. Once again, there is something true in this approach. There are important differences between cultural and historical communities in the way people understand good and evil, right and wrong. The sense of decency, honesty, integrity varies in space and time. However, the respect for the traditional customs and ethical behaviour are not quite the same.

The traditional customs impose on the individual by the weight of history and by the pressure of the crowd. They should be observed because so many generations did it in the past, keeping one society alive and contributing to its progress, at least for a while. On the other hand, communities dislike the rebels, the

dissidents who defy the traditional ways cherished by majority. Morality implies the individual's freedom to choose his or her way of life, assuming some responsibility. It is an accident that one was born in a conservative society, where, say, according to tradition, the husband is the master of his wife and father is the master of his children; a society where women and children may be abused, beaten, starved, humiliated; where parents decide the marriage of their kids, etc. Taking for granted such obsolete traditions or choosing to challenge them is an ethical decision.

Secondly, the traditional customs are most often incomprehensible. For instance, what can one answer to the question "Why people must wear black at funerals?" The only possible answer is "Because that's our traditional way." But how to explain that black is a better mourning colour than the Chinese white or the Buddhist orange? Typically, people pay respect to traditional customs by virtue of *mimetic conformism*. More or less, moral norms are intelligible and supported with rational arguments. If one kid wants to know why should he always tell the truth, mom or dad can give him an explanation: because if one told the truth only when convenient, then no one would be reliable, and the social life would be severely disturbed. Moral norms are supposed to be rational.

Finally, traditional customs are always local and particular, being specific to a certain cultural environment and historical age. In a global world, the ethnographic part of local traditions (clothing, food, ceremonies, etc.) is worthy to keep alive, because unique traditions define the identity of a specific community. But the mores of a place and time, the mentalities they express should be rationally assessed and, if social progress demands, radically changed. It is traditional in the Islamic fundamentalist states to cut off the right hand of a thief or to lapidate an adultery woman; in many countries bribe is a traditional way to close deals; in some parts of the world, circumcision for both men and women complies with ancient traditions, etc. Nevertheless, in our times, such brutal

traditions are ethically unacceptable. As we shall see in a different context, identifying ethics with local traditions and mores leads to an extreme ethical and cultural relativism. Moral rules claim to be universal, valid for each human being, at all times and everywhere. Even though this claim does not stand most often, the moral norms try, at least, by their very nature, to be universally accepted.

As the following cases show, the differences between traditional standards of honesty, decency, and integrity in different parts of the world generate serious ethical quandaries in international business, since what may look unethical in one country is a common, day-to-day practice in other countries, where no one seems to be disturbed or feel uncomfortable with doing certain things.

FACILITATION OR BRIBERY: CULTURAL AND ETHICAL DISPARITIES

Geletex Inc. is a U.S. telecommunications corporation attempting to expand its operations worldwide. As Geletex begins its operations in other countries, it has discovered cultural, governmental, and ethical standards that differ significantly from country to country and from those in the United States. Geletex has had a code of ethics for its U.S. operations since 1975. The company's director of compliance, Jed Richardson, is well known and respected throughout the company for his high standards and trustworthiness. As Geletex's international operations grow, Jed is becoming increasingly uncomfortable with what appear to be double standards for the company's U.S. operations and its operations in other countries. Jed, who has been travelling to each of the Geletex international offices, has found the following situations, which since have been causing him some sleepless nights:

In the Lima, Peru, office, Jed, in reviewing financial records, discovered that the commission expense for the branch is unusually high. Geletex pays its salespeople commissions for each commercial customer they recruit for cellular or long-distance services. Jed knows from experience that some companies pay unusually high sales

commissions to disguise the fact that salespeople are paying kickbacks in exchange for contracts. In the United States, such payments would be commercial bribery and a violation of Geletex's code of ethics. When Jed confronted the Lima, Peru, district manager and questioned him about the high commissions, he responded, "Look, things are different down here. We've got a job to do. If the company wants results, we've got to get things moving any way we can."

In the Stockholm, Sweden, office, Jed noted a number of college-age student employees who seemed to have little work to do. Again, Jed questioned the district manager, who responded, "Sure, Magnus is the son of a telecommunications regulator. Caryl is the daughter of a judge who handles regulatory appeals in utilities. Andre is a nephew of the head of the governing party. They're bright kids, and the contacts don't hurt us. In the Scandinavian culture, giving jobs to children is part of doing business."

In the Bombay, India, office, Jed noted that many different payments had been made to both the Indian government and government officials. When Jed voiced his concern, the district manager responded, "I can explain every payment. On this one, we needed the utilities [water and electricity] for our offices turned on. We could have waited our turn and had no services for 90 days, or we could pay to get moved to the top of the list and have our utilities turned on in 48 hours. On the check for licensing, again, we could have waited 6 months to get licensed or pay to expedite it and be licensed."

Jed is an expert on the Foreign Corrupt Practices Act. The act permits "facilitation" or "grease" payments but prohibits bribes. Facilitation opens doors or expedites processes; it does not purport to influence outcomes. Jed is unsure about Geletex's international operations and compliance with the law. He is very unsure about Geletex having an international code of ethics.³

A relativist would think Jed had doubts about the ethical correctness of these practices merely because he is an American and not a Latin American, Scandinavian or Indian. After all, each place defines honesty and integrity in its own specific way, but none is better than the rest from an ethical point of view. Nevertheless, we might also think Jed's criticism has nothing to do

with his nationality. One does not have to be an American, a Russian or Chinese to see that, legal or not, any kind of "stimulation" that seeks to bring forth an unfair competitive advantage is not clean from a moral perspective. Like " $2 + 2 = 4$ ", moral judgment is true or false not only for Americans, but for every rational human being, ready to use her mind with objectivity.

Ethics and legal regulations

Some people believe they could sum up the whole morality of business in one single principle: "Obey the law." What else a businessperson could be expected? Why should he or she keep more and different rules than anybody else? "Some have said that corporate concern about business ethics can be reduced or eliminated by turning problems over to the legal department. The operative idea is 'let the lawyers decide; if it's legal, it's moral.' Although this tactic would simplify matters, moral evaluation needs to be distinguished from legal evaluation."⁴

Many people believe that law, not ethics is the only relevant guide in business. The reasons that lead people to hold a legalist view of the ethics of business are varied, but two predominate. John Boatright defines two schools of thought on this matter.

One perspective considers that law and ethics govern two different realms. "Law prevails in public life, whereas ethics is a private matter. The law is a clearly defined set of enforceable rules that applies to everyone, whereas ethics is a matter of personal opinion that reflects how we choose to lead our own lives."⁵ Consequently, it would be a mistake to apply ethical rules in business, just as it would be a mistake to apply rules of poker to tennis. A variant of this position holds that the law represents a minimal level of expected conduct that everyone should observe. Ethics, on the other hand, is a more demanding, optional level. It's

highly honourable to act ethically, but everyone's behaviour has to be legal.

Both versions of this first legalist perspective are mistaken. Although ethics does guide us in our private lives, it is also applicable to matters in the public realm, where different individuals compete or cooperate, generating social, economic and political processes and their effects, that influence in a desirable or negative way everybody's private life. It is not at all absurd to judge business practices as ethical or unethical, as, for example, when we say that discrimination or consumer fraud is wrong. Moral judgments also view economic systems. Thus, most people believe that capitalism is morally justified, although it has many critics who raise moral objections.

The other school of thought is that the law embodies the ethics of business. There are ethical rules that apply to business, according to this position, and they have been enacted by legislators into laws, which are enforceable by judges in a court. "As a form of social control, law has many advantages over ethics. Law provides more precise and detailed rules than ethics, and the courts not only enforce these rules with state power but also are available to interpret them when the wording is unclear."⁶ A common set of rules known to all also provides a level playing field, creating the premises of a fair competition. For these reasons, some people hold that it is morally sufficient in business merely to observe the law. Their motto is "If it's legal, then it's morally okay." Nonetheless, it is not so difficult to distinguish between law and morality in modern business activities.

To the surprise of commonsense, conformity with the law is not, in itself, a legal matter, but a moral obligation. According to Manuel Velasquez, "most ethicists agree that all citizens have a moral obligation to obey the law so long as the law does not require clearly unjust behaviour. This means that in most cases, it is immoral to break the law. Tragically, the obligation to obey the law can create terrible conflicts when the law requires something that

the businessperson believes is immoral. In such cases, a person will be faced with a conflict between the obligation to obey the law, and the obligation to obey one's conscience."⁷ The way people treat the law depends on their ethical commitment to take legal regulations seriously or, on the contrary, to ignore and break the law any time they can do that unpunished. A recent study reported in *Why People Obey the Law* by Tom R. Tyler shows that, "obedience to the law is strongly influenced by a belief in its legitimacy and its moral correctness."⁸ On the other hand, almost every legal system enshrines much moral teaching, and moral considerations have an important influence on the interpretation and development of the law. The legal system would break down unless most people obeyed most laws most of the time, unless witnesses told the truth, and judges reached honest verdicts without the threat of coercion. A legal system fails to do its job when laws are ambiguous and contradict each other, when the lawyers and police force are corrupted, and when a significant number of people get in the habit of breaking the law, without even the slightest feeling of guilt, shame or remorse. Consequently, morality is not second to legal justice, like an idealistic, but unnecessary jewel or make-up put on the rough, but strong body of the law. On the contrary, the morality of a nation is the backbone of the legal system, and if the backbone is not upright and strong, the whole body of the legal system would be slanting, ugly and impotent, vicious and pervert. When corruption, bribery, and political pressure tend to distort the fair competition in the market and to destroy the natural mechanisms of a free-market economy, to obey or to break the law might become a critical moral decision, as long as more and more businesses have to choose between legality and bankruptcy.

Many sceptics about business ethics would probably submit that keeping the law is primarily a moral commitment, but some of them would make a second claim, perhaps more difficult to reject. They would say that, beyond the moral decision of an honest businessperson to keep the law, there is no room left for any other

kind of ethical commitment. Following Milton Friedman, many economists still deny the possibility of business people having social responsibilities or ethical obligations. A businessperson has no alternative, in view of the competition of the marketplace, to do anything other than buy at the cheapest and sell at the dearest price he can. In any case, it would be irrational – if, indeed, it were possible – not to do so. Admittedly there is a framework of law within which he has to operate, but that is all. So long as he keeps the law he is free to maximize his profits without being constrained by any moral or social considerations, or any further sense of responsibility for what he does. But this is not true, for several reasons.

First, every law can be, and should be, evaluated from a moral viewpoint. Individuals or social groups blame certain legal regulations for immorality. In a democratic society, when a consistent majority comes to believe that a specific law is immoral, normally the lawmakers – Parliament and government – modify more or less substantially the law to satisfy the ethical requirements of the people. Most often, the law is reactive, responding to problems that people in the business world can anticipate and deal with long before they come to public attention, as it is the case with discrimination or child labour. However, as long as the law stays as it is, whereas the public discontent is growing, acting legally does not guarantee the ethical correctness of one's decisions and actions.

Secondly, most often the legal norms that regulate business activities are influenced by various extra-economic factors, such as social ideals, political interests or religious faith, which entail consequences in the field of economy. Sometimes these consequences conflict with the intrinsic logic and specific morality of business. For instance, an inefficient company, loaded up with large debts, and which has no real good prospects, must be let go down; economically speaking, its bankruptcy is the only ethical solution. If, for social or political reasons, the government decides to keep in business such a company, legally spending taxpayers'

money, it might be socially or politically convenient but, from the standpoint of market economy, it is not ethical. The morality of business requires equal rules for all the players in the economic game, otherwise competition would not be fair. Sometimes, specific social or political circumstances force the government to favour, by legal regulations, certain economic activities, certain forms of property, social classes, occupational categories, and so on, and this kind of legal discrimination violates the moral rules of business. To sum up, business has its own intrinsic moral rules, meant to guarantee a fair competition, aiming at a maximum profit, obtained by means of efficiency, and not by stealing, lying, cheating, etc. The legal system must satisfy not only the economic necessities, but also many extra-economic requirements, and that is why so often the law conflicts with the morality of business, creating unequal terms of the economic competition.

Third, the law cannot and must not regulate every aspect and each moment of our lives. The legal system enforces only a general normative framework of the economic life that traces the limits of the individual freedom, whose diversity generates a lot of unpredictable evolutions and irregular circumstances, which it would be quite impossible to anticipate and freeze in some inflexible patterns of legally correct behaviour. But when the law has nothing to say, morality is the only available guide of our actions. For example, from a legal point of view every person is free to choose his or her inheritors. Morally, it does count whether somebody gives his assets after his death to his relatives or close friends, to a scientific research fund, to a religious cult, or to his pet. Legally, one is free to spend her money in any way she likes it, except a number of explicitly forbidden activities; morally, it is a significant difference between spending your money on gambling, drinking or shooting lions in Africa, and making a good investment. Legally, a good investment is one that makes a profit, without breaking the law; morally, an investment in a casino or a peep show bar is not equal to investing in a hospital or a water plant.

Fourth, most often the law tells us *how* to proceed, but not *what* we should do. The law is concerned with the available *means* of our actions, but not with our *purposes*, decisions and choices. The legal system cannot answer questions like these: Which is better, retrench the work force so that a company confronted with financial difficulties, can recover and perhaps rehire these people later, or keep full employment with possible dire consequences for the company, including bankruptcy? Should a business allow itself to be the object of a hostile takeover, which could result in the loss of many jobs of those currently employed? Or should it resist the takeover by paying "greenmail", buying the stock of a corporate raider at higher than market price so the raider will go away? Or should the company load itself up with debt to decrease its attractiveness to a raider, even though this may reduce the company's profits? If we cannot clearly see all the ethical ramifications of our actions, we are often unable to isolate all the morally relevant aspects of a given situation and choices become difficult, since "in virtually every relationship with stakeholders, there are issues that are ethical dilemmas, even though they're legally clear."⁹ It would be a very serious mistake to think that the legal system could ever prescribe the most efficient business plans, marketing strategies or personnel policies.

One final reason why, beyond the strict conformity with the law, ethics could be sometimes useful, is the national character of legislation. Indeed, there are international or multinational legislations, like those already adopted by the European Union, but still a good deal of legal regulations are specific to each national state. For instance, some medications are prohibited in the USA, but they can be produced in America and sold to other countries, especially from the Third World. Therefore, it is legal to protect the health of the Americans, and to jeopardize the health of other nations. But is it ethical? De George presents us a clear example of legal, but unethical behaviour in international business. Many countries are unable to fund the extensive testing operations

conducted by the United States government or required by it. These countries have passed laws, however, which prohibit a drug company from marketing a drug forbidden for sale in the country of its origin. Some drug companies, wishing to market their drugs but also wishing to abide by the law, have adopted a number of practices for which they have been morally condemned. "Some have added an inert substance to a drug so that technically it is not the same item, even though it has all the same effects. Then the drug has been marketed under a different name in the foreign country. Other countries have produced the drug that has been outlawed in the United States in a third country where it is not outlawed, and then they have shipped it elsewhere. Both of these practices are within the letter of the law in the countries where the drugs are finally sold, even if they are clearly outside the spirit of those laws."¹⁰

To sum up: "Obey the law" is indeed a fundamental principle of any free market economy and of any democratic society, but it does not resolve all the problems of the economic life, and cannot be a panacea for all the practical dilemmas that an economic agent has to confront. Consequently, one cannot reduce business ethics to the respect of the legal system and can prove that it has its irreducible object of investigation.

The idea that modern management does not reduce to strict legality, implying an ethical approach, is also sustained by empirical evidence, offered by present day practice of business. A considerable number of case studies lead us to distinguish several possible relationships between the legal requirements that one company must keep and the ethical responsibilities that the same company should take on.

Sometimes, there are no legal regulations demanding a specific decision or behaviour; and yet, judging from an ethical viewpoint, the managers and investors feel they have the obligation to do certain things, which are not legally enforced, or not do other

things, even though still permitted by the law. The classical case of Merck and Co. and river blindness perfectly illustrates this situation.

MERCK & Co. AND THE RIVER BLINDNESS

River blindness is a tropical disease that, according to World Health Organization, in the 1970s affected some 18 million impoverished people living in remote villages along the banks of rivers in tropical regions of Africa and Latin America. The disease is caused by a tiny parasitic worm that is passed from person to person by the bite of the black fly that breeds in river waters. Eventually, millions offspring of the parasitic worm, called microfilaria, invade the eyes and gradually blind the victim.

At that time, there was practically no efficient medical treatment available for the destitute victims of the terrible disease. In 1979, a research scientist working for Merck & Co. discovered evidence that one of the company's best-selling animal drugs, Ivermectin, might provide a low cost, safe, and simple cure for river blindness. Analysing the possibility of funding a research program meant to find the cure of the tropical disease, Merck's leaders quickly realized that if the company succeeded in developing a human version of the drug, after spending more than \$100 million, the victims of the disease were too poor to afford it. It was unlikely the company could recover these costs or that a viable market could develop in the poverty-stricken regions where the disease was rampant. From a strictly business perspective, Merck's managers were reluctant to undertake expensive projects that showed little economic promise, such as the suggested development of a drug for river blindness. Yet without the drug, millions would be condemned to intense suffering, and partial or total blindness.

In the end, the management team reached the conclusion that the potential human benefits of a drug for river blindness were too significant to ignore. Many of the managers felt, in fact, that because of these human benefits the company was morally obligated to proceed in spite of the costs and the slim chance of economic reward. In late 1980s, after seven years of expensive research and numerous clinical trials, Merck succeeded in developing a human version of Ivermectin, named Mectizan. A single pill of the new drug taken once a year would

eradicate from the human body all traces of the parasite that caused river blindness and would prevent new infections. By 2004, working with World Health Organization, government and private voluntary organizations in Africa, Latin America, and the Middle East, Merck was providing the drug for free to 40 million people a year, effectively transforming their lives and at long last relieving the intense sufferings and potential blindness of the tropical disease. Merck also expanded the program to include the treatment of elephantiasis, another parasitic disease that often coexists with river blindness and that Merck researchers discovered in the 1990s, could also be treated effectively with Mectizan. "In total, about 30 million people in 32 countries are now treated annually with Mectizan. Merck reports that it has no idea how much the entire program has cost, but estimates that each pill is worth \$1.50".¹¹

Merck did not have any legal obligation to fund the research program that produced the new drug, but its top managers felt it was their moral duty to use a small part of the huge resources of the company to save the lives of so many poor people in the Third World, deprived of any other chance to cure. This ethical responsibility, taken by the leaders of Merck, proved eventually to be also a profitable decision, because the company got a high reputation for corporate social responsibility and a very favourable public image, that offered Merck a considerable competitive advantage, which helped the company to change in a relatively short while charity spending into a profitable investment.

On occasions, there might be an open conflict between the legal regulations and the ethical standards. The legislators or the courts of law can enforce laws or verdicts that generate serious ethical quandaries or even immoral consequences – as the Johnson Controls case demonstrates.

JOHNSON CONTROLS EXCLUDING WOMEN FROM HAZARDOUS WORKPLACES

Johnson Controls, Inc. [JC] made batteries whose primary ingredient, lead, can harm a foetus but not a pregnant woman. The company therefore required female employees to sign a statement warning them about the risks of lead exposure that pregnant women run for their babies. During the four years this policy was in effect, eight employees became pregnant while maintaining blood lead levels in excess for pregnant women. The company then announced a new policy: Women who are pregnant or who are capable of bearing children will be refused jobs involving lead exposure. Two years later, three JC employees sued the company, claiming that the foetal protection policy was a form of sex discrimination because it applied to fertile women, but not fertile men. "JC stated that it had no intent to discriminate, but merely wanted to protect the health of unborn children and avoid the possibility of being sued by an employee for the injury or death of her foetus."¹²

The feminist organizations incriminated this new policy, horrifying the public opinion when they mentioned several cases of women who decided to undergo voluntary sterilization rather than give up high-paying jobs involving exposure to chemicals that are potentially harmful to a developing foetus. Under the pressure of mass-media outcry, The Supreme Court of the USA made an apparently wise decision: the employers are legally bound to hire any fertile woman, on one condition: the woman employee should sign a legally valid waiver, taking full responsibility for her decision to run the risks of lead exposure. Unfortunately, this decision of the Court creates a new situation, putting the employers at uncontrollable risk: The waiver of subsequent claims by the female worker would be of no legal significance because the deformed foetus, if born, may have its own rights as a person that could not be waived in any way by the mother!¹³

Finally, quite often a legal regulation is incapable of solving an ethical issue. On the contrary, instead of making things right, the law might create additional problems, letting the ethical problem unsolved or even making it more difficult than it was initially – as the Resistol case dramatically shows.

RESISTOL AND STREET CHILDREN IN HONDURAS

Resistol is an adhesive, manufactured by Kativo Chemical Industries – a subsidiary of H. B. Fuller Company from St. Paul, Minnesota. Kativo sells more than a dozen different adhesives under the Resistol brand name in several countries in Latin America, for a variety of industrial and commercial applications. In Honduras, the Resistol products have a strong market position. Three of these products are solvent-based adhesives designed with certain properties that are not possible to attain with a water-based formula. These properties include rapid set, strong adhesion, and water resistance – qualities required in shoe manufacturing and repair, leatherwork, and carpentry. Due to the extreme poverty of their families, many street children in Honduras are addicted to sniffing the hallucinogenic fumes of Resistol, and that is doing them irreversible brain damage. Even though the street children of each Central American country may have a different choice of a drug for substance abuse, and even though Resistol is not the only glue that Honduran street children use as an inhalant, the term Resistolero stuck and became synonymous with all street children, whether they use inhalants or not.

In 1983, Honduran newspapers carried articles about police arrests of Resistoleros – street children drugging themselves by sniffing glue. The fuss made by the press on this issue of Resistoleros worried and even outraged the public opinion in the USA. A certain number of shareholders sent letters of protest to Elmer Andersen, the Chairman of the Board and CEO of H. B. Fuller, demanding that the company should take steps to solve this problem. At the same time, some humanitarian organizations suggested that oil of mustard, added to the product, could prevent the abuse. They argued that a person attempting to sniff glue with oil of mustard added would find it too powerful to tolerate. Under the pressure of the press and humanitarian NGOs, the Honduran Parliament enforced a law making the addition of oil of mustard mandatory. Nevertheless, additional research, asked by Humberto Larach, the head of the Central American division of Kativo, proved that oil of mustard was a carcinogenic agent. Mr. Larach confronted a difficult dilemma: either to keep the new legal regulation, jeopardizing even worse the health of the street children, or to ignore, on ethical grounds, this too superficial legislation, producing hazardous consequences, contrary to the good intentions of legislators. Besides,

the dramatic condition of the street children in Honduras and glue sniffing were not the effects of one chemical company producing solvent-based adhesives, but social problems, and Kativo or any other company is limited in what it could do about the problem.¹⁴

In conclusion, important as it is, strict legality in business cannot be accepted as a wise and efficient strategy. "Even in the best cases", says Dienhart, "legal compliance is unlikely to unleash much moral imagination or commitment. The law does not generally seek to inspire human excellence or distinction. It is no guide for exemplary behaviour – or even good practice. Those managers who define ethics as legal compliance are implicitly endorsing a code of moral mediocrity for their organizations".¹⁵ As Richard Breeden, former Chairman of the Securities and Exchange Commission, noted, "It is not an adequate ethical standard to aspire to get through the day without being indicted."¹⁶

A scholar's definition of "ethics"

What, then, is ethics? I shall equate ethics with "moral philosophy" – which is a philosophical inquiry of morals and morality. Ultimately, the ethical theory is an attempt to give a rational answer to one fundamental question: What one should do? Quoting a well-known definition, stated by Henry Sidgwick, we can say that ethics, conceived as a theoretical approach of the moral life, means "any rational procedure by which we determine what individual human beings ought – or what it is right for them – to do or seek to achieve by voluntary action."¹⁷ More precisely, ethics has two meanings. First, as moral philosophy or theoretical approach, ethics refers to well based standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues. Ethics, for example, refers to those standards that impose the reasonable obligations to

refrain from incest, rape, stealing, murder, assault, slander, and fraud. Ethical standards also include those that enjoin virtues of honesty, compassion, and loyalty, as well as norms relating to rights, such as the right to life, the right to freedom from injury, and the right to privacy. Such standards are adequate patterns of behaviour because they base on consistent and solid reasons.

Secondly, as a practical approach, normative ethics refers to the study and development of one's ethical standards. As mentioned above, feelings, laws, and social norms can deviate from what is ethical. Therefore, it is necessary to examine one's standards to ensure that they are reasonable and well founded. Ethics also means, then, the continuous effort of studying our own moral beliefs and our moral conduct, and striving to ensure that we, and the institutions we help to shape, live up to standards that are reasonable and solidly based.

As a general theory, ethics is not concerned with any particular category of people; its questions concern humanity. "What one should do in order to fulfil his or her desires, goals, and ideals, in such a way that would make possible the most flourishing life of an individual, no unnecessary harm being done to any other people, but letting everyone else to seek freely his or her personal achievements, and even making a contribution to a better society?" – this is the core of all ethical investigations. The applied or practical ethics ask the same question, but from the standpoint of a particular category of people. What a doctor or a nurse should do in their professional activities – namely healthcare? What a lawyer should do when acting as a judge, a defender or a prosecutor? Our specific question is, "What business people should do in doing business? Which are the moral responsibilities and duties of a businessperson?"

Hearing this question, some people might raise a sceptical brow. Is, after all, ethics relevant to business activities? No one thought to develop a truck driving or math teaching ethics. Why should we take for granted that business is sensitive from an ethical

perspective – like health care, law and order, politics or journalism? Would not be wiser to see business as an ordinary profession, with its specific standards of quality and performance, but not requiring a special ethics? The next chapter will try to show there are some essential ethical implications of the very notion of business.

Notes

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BUSINESS AND MORALITY

Ethical Controversies upon Profit

DODGE v. FORD MOTOR COMPANY

In 1916, a stockholder of Ford Motor Company, named Dodge, sued the company because the top managers decided to distribute as dividends a very small part of the profit made in 1915, preferring to reinvest a huge fraction of profit, to achieve some humanitarian objectives of Mr. Henry Ford, the founder of the company.

"My ambition," said Mr. Ford, "is to employ still more men, to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this we are putting the greatest share of our profits back in the business." With regard to dividends, the company paid sixty per cent, on its capitalization of two million dollars, or \$1,200,000, leaving \$58,000,000 to reinvest for the growth of the company. The lawyers representing the company declared, "This is Mr. Ford's policy at present, and it is understood that the other stockholders cheerfully accede to this plan."

The Court recognized the management's right to spend for humanitarian purposes, but only occasionally and in favour of its own employees or other groups directly involved in the company's activities, but not managers' right to use the shareholders' money to reach social or humanitarian purposes as long term and abstract goals of the company. The Court's decision stated, "The difference between an incidental humanitarian expenditure of corporate funds for the benefit of the employees, like the building of a hospital for their use and the employment of agencies for the betterment of their condition, and a general purpose and plan to benefit mankind at the expense of others, is

obvious. There should be no confusion [. . .] of the duties which Mr. Ford conceives that he and the stockholders owe to the general public and the duties which in law he and his co-directors owe to protesting, minority stockholders. A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the non distribution of profits among stockholders in order to devote them to other purposes."¹

Almost one century old, this legal dispute that involved Henry Ford, one of the apostles of modern capitalism, is still relevant nowadays, when the meaning and social function of business continue to be highly controversial. The world has been rapidly changing after the First World War. Half a century later, a similar trial ended with a radically different verdict of the Court.

A. P. SMITH MANUFACTURING CO. v. BARLOW

The A. P. Smith Manufacturing Company was incorporated in 1896 and is engaged in the manufacture and sale of valves, fire hydrants, and special equipment, mainly for water and gas industries. Its plant is located in East Orange and Bloomfield and it has approximately 300 employees. On July 24, 1951, the board of directors adopted a resolution that set forth that it was in the corporation's best interests to join with others in the 1951 Annual Giving to Princeton University, and appropriated the sum of \$1,500 to be transferred by the corporation's treasurer to the university as a contribution towards its maintenance. This action was questioned by stockholders, and one of them, a certain Barlow, sued the company.

Mr. Hubert O'Brien, the president of the company, testified that he considered the contribution to be a sound investment, that the public expects corporations to aid philanthropic and benevolent institutions, that they obtain goodwill in the community by so doing, and that their

charitable donations create favourable environment for their business operations. In addition, he expressed the thought that in contributing to liberal arts institutions, corporations were furthering their self-interest in assuring the free flow of properly trained personnel for administrative and other corporate employment.

Mr. Frank W. Abrams, Chairman of the board of the Standard Oil Company of New Jersey, testified that corporations are expected to acknowledge their public responsibilities in support of the essential elements of our free enterprise system. He indicated that it was not "good business" to disappoint "this reasonable and justified public expectation," nor was it good business for corporations "to take substantial benefits from their membership in the economic community while avoiding the normally accepted obligations of citizenship in the social community."

Mr. Irving S. Olds, former Chairman of the board of the United States Steel Corporation, pointed out that corporations have a self-interest in the maintenance of liberal education as the bulwark of good government. He stated that "Capitalism and free enterprise owe their survival in no small degree to the existence of our private, independent universities" and that if American business does not aid in their maintenance it is not "properly protecting the long-range interest of its stockholders, its employees, and its customers."

This time, the Court sustained a quite different opinion about the social mission of corporations in their relationships with stockholders and different groups of stakeholders. "It seems to us", said the resolution of the Court, "that just as the conditions prevailing when corporations were originally created required that they serve public as well as private interests, modern conditions require that corporations acknowledge and discharge social as well as private responsibilities as members of the communities within which they operate. Within this broad concept, there is no difficulty in sustaining, as incidental to their proper objects and in aid of the public welfare, the power of corporations to contribute corporate funds within reasonable limits in support of academic institutions. But even if we confine ourselves to the terms of the common-law rule in its application to current conditions, such expenditures may likewise readily be justified as being for the benefit of the corporation; indeed, if need be the matter may be viewed strictly in terms of actual survive of the corporation in a free enterprise system."

Finally, the Court denied Mr. Barlow's legal action. "In the light of all of the foregoing we have no hesitancy in sustaining the validity of the donation by the plaintiff."²

The common law did not change in half a century, but the opinions of the judges did. Therefore, it is a natural question whether we have to deal with exclusively legal matters here or is it possible to see in their very substance certain ethical implications, directly connected with the basic elements of business in general?

In a standard, textbook definition, business appears as a privately owned commercial enterprise, whose intrinsic purpose is to make a profit for its owners by legally selling on a free, competitive market certain socially accepted goods and services. Obviously, profit is the key term in this definition. There are many open questions about profit; at least two of them have a clear ethical dimension, because we can discuss them in terms of right and wrong, good and evil, fairness, and happiness.

First, we should ask if profit is the highest, or even the sole purpose of any business or not. This question gets two antagonistic answers. Some people will say, "Definitely, profit is the ultimate goal of any business", whereas other people will reply, "No, the essential purpose of business is to fulfil the human needs and wants." None of these two answers is absurd and completely irrational. Each one of them has its own strong arguments as well as its weak points. Yet can they both be true? I think they can, but depending on how large or narrow perspective we take.

From a narrow viewpoint, focused on a single business, the answer is affirmative. At the *micro level* of market economy, each single business was initiated by its owners, who put at risk their capital, as a system of resources (workers and managers, facilities, technology, raw materials, utilities, etc.) in order to make a profit for the investors. From this perspective, society appears as an economic environment that offers business opportunities. In other

words, each *business needs society* as a means to make profit. According to Ronald Duska,

A business or a corporation does two things in the free enterprise system: It produces a good or service and it makes a profit. The making of a profit, however, is the primary function of a business as a business, for if the production of the good or service is not profitable, the business would be out of business. Thus, non-profitable goods or services are a means to an end. People bound together in a business are bound together not for mutual fulfilment and support, but to divide labour or make a profit.³

Enlarging our perspective, at the *macroeconomic* level, we will get a different picture. The social function of business is the most efficient satisfaction of the social needs and wants, whereas profit counts as the deserved reward of those investors who manage, better than their competitors, to make the best offer on the market, attracting the consumers' choice, who value the price, quality, safety, and reliability of their products and services.

If a company has done things right in the sense of producing things people want to buy and find useful, has done so efficiently so that people can afford to buy the things that are produced, and has hired and maintained an efficient and well-motivated work force, the company is rewarded with profits. In the best sense of the word, then, profits are the reward for having efficiently produced something useful, representing the corporation's share of the wealth that has been created.⁴

From this perspective, *society needs businesses* as means to satisfy human needs – the purpose of market economy. Naturally, Ford, Daimler or Toyota produces cars for profit. Consequently, one cannot understand much about the rational functioning of one company without taking profit as the key concept of an efficient management. However, if we ask, "Why do these competing companies produce cars?" the only rational answer will be, "Because we, the people, need transportation." There is food and

beverage industry because we need to eat and drink. It would be absurd and frightening to say that we all live under the sun because the motor companies need buyers for their cars or that we were born simply because Coca Cola and Pepsi Cola need a mass of consumers to make them profitable.

Important as it might be, this distinction does not count much in business ethics. First, we should not think that investors and managers who seek profit above all do not care about satisfying the best they can certain social needs and wants. On the contrary, on a competitive market, not disturbed by political influence and monopolistic practices, the only way for a company to be profitable is to make a better offer than the products of its competitors. Only this way one company will persuade consumers to buy the company's products or services, attracted by their superior quality, price, safety, and reliability. The two opposite perspectives differ in the way they define the relationship between profit and fulfilling human needs in terms of *end and means*. From the narrow, micro level perspective, profit appears as the ultimate end, whereas satisfaction of social needs is a necessary means. On the contrary, from the large, macro level perspective, fulfilling human needs appears as the ultimate purpose of market economy, whereas profit is a deserved reward for those companies which manage to make the most attractive offers on the market. But no matter how we define profit, as end or means, in practice all the competing businesses are supposed to do the same: to put on the market goods and services capable to attract the consumers, the referees of the economic game, capable to decide who stays in business and who goes down. The market never rewards good intentions as such. If one rational consumer has to choose between a shoddy product, made with the noble intention to serve the people, and an excellent product, made with the intention of squeezing some profit, no doubt she will buy the last. Not to mention the disturbing fact that good intentions are, more or less, invisible and uncertain, whereas the quality of a product allows an objective assessment.

On the other hand, the agents of market economy – investors, managers, employees, consumers, etc. – cannot control the economic system. Their actions, for which they might hold responsible, do not reach the macro level of economy. This is a given state of society as a whole that one economic agent, no matter how large and powerful, cannot change arbitrarily. Or, as we shall see, one could be held ethically responsible only for those acts that he can control in accordance with his free will. Hence, business ethics is relevant only at the micro level of economic life, where, as agreed, profit is the ultimate goal of any business. Therefore, any attempt to blame businesspersons for seeking profit above all, at least in a capitalist economy, is more or less irrational. Yet the ways one business seeks to make profit are ethically relevant. Mr. Sly's ingenious method and Mr. Wheat's complicity are deeply immoral. The blood business of Plasma International or the marketing strategy adopted by Nestlé Corporation in selling its powder milk formula in Africa are highly controversial from an ethical viewpoint. By contrast, the top managers from Johnson & Johnson deserve our praise for the way they solved the Tylenol crisis. The next two cases support the notion that profit is the ultimate end of any business, provided made by ethical means. They also anticipate a second essential question about the morality of profit.

OUTSOURCING AT ANY COST?

In 1997, Galaxywire.net, a successful Internet provider, was looking for a new central office location. The company found a very receptive community in Green Fork, Illinois. For 35 years, Green Fork's largest employer was Freedman Steel, but the company left town after a long and bitter labour dispute. With the unemployment rate hovering at 16 percent, the city was ready to offer Galaxywire a great deal in return for moving there. The company planned to hire 3,000 in its first year, primarily in customer service, software engineering, and Web design.

City development officials offered the new investor several tempting offers: a \$300,000 low-interest loan for employee training; a 50 percent tax abatement for the first ten years; they also landed a federal grant to construct a new \$2.3 million secondary building for day care and executive suites.

CEO Dale Horner made a substantial commitment to the residents: "We plan to stay and be an integral part of the community. Our employees are really a family. Across the board, everyone is considered as important as the highest executive. Lots of companies say that, but as I hope you'll come to see, we're rather different from most companies."

Seven years later, Galaxywire was thriving. Not only was the home office extremely productive, the company had expanded considerably, opening dozens of offices across the country. Nevertheless, top management was considering closing the Green Fork office and moving its customary service, software engineering, and Web design units to India. The company stood to save at least \$10 million a year by doing so. Customer service employees earning \$10-15 an hour in the U.S. earn only \$2-4 in India. Similarly, Web designers and software engineers earning \$60-70 an hour here earn only \$6-8 an hour there. On the other hand, the quality of Indian services reaches the top: 85 Indian software companies had received a level 5 CMM, which is the highest rating of engineering excellence – only 42 other organizations worldwide had achieved that rating.

Galaxywire decided to let its employees know immediately of its intention to close the home office, giving the workers 10 months notice – 8 months more than the federal law requires for mass layoffs. It also provided severance packages of a month's full pay and extended health insurance coverage for five months. However, none of the top executives based in Green Fork would be laid off. They would move to smaller offices in California and were likely to receive particularly high year-end bonuses as a result of the savings outsourcing would bring.

The workers and the city tried to find a solution that would have allowed the company to stay and still recoup most of the money it hoped to save by moving.

The city proposed a deal that would save the company \$7 million in the first year, \$8 million in the second, and \$9 million yearly thereafter. The city extended the tax abatement for another decade, increasing the yearly reduction to 60 percent.

The employees agreed to a 15 percent pay cut and a considerable reduction in benefits. The company still would not stay. The workers made a new offer, cutting another 5 percent of their wages, slashing a third of their vacation days and doubling their health insurance premiums. The city increased tax reduction by another 5 percent. The resulting deal saved the company \$10 mil in the first year, \$11 mil the next, and \$12 mil yearly thereafter.

The top executives met the next day to discuss this new offer. They realized that this deal did have a number of advantages:

1. Deciding not to move would increase employee loyalty and make good on the promise they initially made to stay.
2. There was already a highly skilled and dedicated workforce in Greenfork.
3. The workforce in India had not been fully tested. And several companies had already brought their customer service centres back from India, where the agents did not always master American colloquialism, frustrating many customers, especially those hostile to outsourcing.
4. If they accepted this offer, they might be able to influence other cities where their offices were located to give them similar deals and thus avoid the risk and hassle of moving altogether.
5. If they decided not to move, they might be able to save a good deal on marketing since staying could provide a lucrative advertising angle such as "Galaxywire is working to keep jobs in America".

However, there were also some potential negatives to accepting the offer:

1. There might be growing resentment in the community about Galaxywire forcing its employees and the city to bend over backwards, creating a dangerous precedent that could further strip the community of tax support from other businesses and lower the salaries and benefits of employees elsewhere.
2. It seemed unlikely that the employees and city would be prepared to continue making such extensive sacrifices indefinitely. Eventually, the workers might unionize and make things more difficult.⁵

An almost identical story happened recently in our country. A few years ago, the giant multinational company Nokia relocated one of its factories from Bochum, in Germany, to Jucu, near Cluj-Napoca.

Forgetting about the generosity of German local and national authorities, Nokia chose to manufacture cheap cell phones in Romania, where the workforce is considerably cheaper. Three years later, the multinational decided to shut off its local factory and to move its operations in Asia, closer to its profitable market. This is a never-ending story nowadays in the global economy.

HOME DEPOT: GOOD ETHICS OR SHREWD BUSINESS?

When weather forecasters predicted that Hurricane Andrew would strike Miami area with full force, customers rushed to stock up on plywood and other building materials. That weekend the 19 Home Depot stores in southern Florida sold more 4-foot-by-8-foot sheets of exterior plywood than they usually sell in two weeks. On August 24, 1992, the hurricane struck, destroying or damaging more than 75,000 homes, and in the wake of the devastation, individual price gougers were able to sell basics like water and food as well as building materials at wildly inflated prices.

But not Home Depot. The chain's stores initially kept prices on plywood at pre-hurricane levels, and when wholesale prices rose on average 28 percent, the company announced that it would sell plywood, roofing materials, and plastic sheeting at cost and take no profit on the sales. It did limit quantities, however, to prevent price gougers from reselling the goods at higher prices. In addition, Home Depot successfully negotiated with its suppliers of plywood, including Georgia-Pacific, the nation's largest plywood producer, to roll back prices to pre-hurricane levels. Georgia-Pacific, like Home Depot, has a large presence in Florida; the company runs 16 mills and distribution centres in the state and owns 500,000 acres of timberland.

Although prices increased early in anticipation of Hurricane Andrew, Home Depot was still able, with the cooperation of suppliers, to sell half-inch plywood sheets for \$10.15 after the hurricane, compared with a price of \$8.65 before, thereby limiting the increase to less than 18 percent. Home Depot executives explained their decision as an act of good ethics by not profiting from human misery. Others contend, however, that the company made a shrewd business decision.⁶

Once agreed that profit is the ultimate end of business, a second question arises: How large should be one company's profit? The supporters of the narrow, micro level perspective logically claim that a good, competent and *competitive* management should aim at maximizing the company's profit (using methods permitted by the law), since this is the best way to satisfy the owners' interests. One competent and competitive manager should not be content with making some profit, no matter how large or small. A manager's job is to dedicate his talent, experience, energy, and inspiration to *maximize* the profit of the company he is running. With unusual truthfulness, James Michelman – a businessman, not a scholar – claims, "Business competition – free enterprise – is a rational undertaking. Profit maximization is the overriding consideration in the competitive universe, and profit maximization is achieved through rationality."⁷ The supporters of the large, macro level perspective ideologically rather than logically claim that a good, competent and *responsible* management should aim at the best fulfilment of the social needs and wants, since this is the best way to satisfy the consumers' interests. As a deserved reward for economic performance, profit should be "*reasonable*."

Obviously, these two opposite perspectives try to convince us of their truth with different arguments. Considering their rationality and precision, the arguments of the maximalist viewpoint seem much stronger. It is easy to state a clear definition of what maximum profit means, and to understand the objective logic of maximizing profit, extensively described through mathematical models. It is extremely difficult, if not impossible to define in strict terms what a "reasonable" profit means, and to draw a line beyond which profit becomes indecent or obscene. Yet we are not interested here in the technical details of the debate; we are concerned with the ethical implications of these two opposite stands.

The defenders of maximizing profit claim that a successful business always brings forth considerable service to society.

Maximizing profit means to do a good job on the market, selling excellent products and rendering excellent services, which satisfy certain human needs and wants, making the consumers happy. Secondly, a successful company creates and maintains a good number of jobs, offering its employees stable, safe workplaces and fair wages. Finally, maximum profit enlarges the taxes paid by a successful company to the local and national budget, which makes an important contribution to an efficient administration. On the other hand, financial success allows one company to allocate funds for charity, education, health care, law and order, etc. Starting from these premises, successful businesspersons do not appear as greedy, cynical and selfish people, deserving moral blame, but as rational, self-motivated, and capable people. Trying to maximize their profit, they strive to serve the best the public interest.

Theoretically, this idealized portrait might look good. In practice, too often maximizing profit as a proof of excellence in business entails a lot of harm done to many people, who cannot find themselves in a win-win situation. On the contrary, a few people win because many other people lose a lot. Having a look at the Galaxywire case, we see that none of the pros and cons considered by the top managers took into account the legitimate interests of the employees and the city of Green Fork; they all had in view the interest of the company in maximizing profit by reducing the costs of the workforce. No argument considered the interests of the consumers, who were supposed to get inferior services at the same price. Thousands of jobs were to sacrifice for the sake of maximizing profit. As for the contribution of the company to the local budget, it sounds like a joke: for many years, Galaxywire was the beneficiary of cheap loans and substantial tax abatements. If maximizing profit is the keystone of successful management, then outsourcing the operations to India appears as a rational, financially valid idea. Nevertheless, from an ethical perspective it is not a fair policy. The company started up a profitable business due to the efforts and enthusiasm of a capable,

dedicated workforce. It took advantage of a generous policy of the city, in exchange for a firm promise to stay and be part of the local community. In the end, forgetting about the CEO's commitment, Galaxywire decided to relocate the whole operation for a higher profit. Perhaps the mathematics is perfect, but the morality of this strategy sucks.

Maybe excellence in business does not consist in simply maximizing profit. Attached to the macro level analysis, the opposite view does not get a high grade at mathematics, but gets a higher rank in ethics. Indeed, one cannot determine in precise numbers when profit ceases to be "reasonable," but the idea is not absurd. It is fair if the Chairman of an important bank or the CEO of a multinational company earns many times more than the average salary. Yet when the ratio is 1 to 35,000 most of us will feel astonished, even though we cannot tell at what ratio this feeling disappears. We cannot calculate how many times a cancer is more hazardous than diabetes, but we will not hesitate to say that diabetes is a lighter calamity than cancer.

Our ethical judgments do not always need a mathematical precision to be valid and highly consensual. Many of our notions are vague; one cannot always tell beyond any doubt whether a certain entity belongs or not to a class of objects. A polygon is either triangle, or not; any natural number is either odd or even. But who is either young or old? Who is definitely smart or stupid? Who is good looking or ugly? We can tell about some individuals they definitely fall under one category or the opposite. Yet about many others we cannot tell; they are somewhere in between. Sometimes and for some observers, they look young, smart and pretty. On different moments or for different observers, the same individuals appear old, stupid and ugly.

It is the same with the "maximized" profit. No one can tell precisely when maximization becomes unacceptable from a moral viewpoint; nevertheless, at a certain level we are almost certain that things went too far and that profit is "unreasonably" high, if we

consider one business's contribution to the general good. Here we can also appeal to numbers and statistics. Here it is a relevant example. Drug companies in the US apply for a patent on any new pharmaceutical drug they develop, which gives them a monopoly on that drug for 20 years. Not surprisingly, high monopoly profits, well beyond the average rate of profits in other industries, are characteristic of the pharmaceutical industry. In a study published in 2003, Public Citizen's Congress Watch noted that in 2002 average profits for drug companies in the Fortune 500 were 17 percent of revenues whereas average profits for Fortune 500 companies in all other industries were 3 percent of revenues. During the 1970s and 1980s, drug companies in the Fortune 500 had median profits on revenues (i.e., as a percent of revenues) that were double the median for all other industries in the Fortune 500. In the 1990s, drug company median profits averaged 4 times the median profits of all other industries. Today, they average close to 8 times the median. Drug companies say they need these profits to cover the costs of research for new drugs. But while drug companies put only 14 percent of their revenues into research, they siphon off 17 percent of their revenues into profits for shareholders and plough 31 percent into advertising and administration. A 2004 study of drug costs showed that prescription drugs "have mark ups of 5,000 percent, 30,000 percent and 50,000 percent over the cost of their ingredients. The ingredients in 100 tablets of Norvasc, which sells for \$220, cost 14 cents, of Prozac, which sells for \$247, 11 cents; of Tenormin, which sells for \$104, 13 cents; of Xanax, which sells for \$136, 3 cents, and so on.⁸ Let us be honest: not bad!

The defenders of liberal economics will tell us a story with fairies and dragons about how wonderful the free market works, solving all the problems like a ghost in the machine. The fairytale describes a wonderful land, called *the Market*, where Good fights Evil and wins the war, even though it loses all the battles. If profit reaches so high in the drug industry, the story goes, do not worry. Sooner or later, the market shall make things right in a very simple

way. Attracted by such a high profit, the other investors will give up producing cars, planes, computers or clothes for a poor profit of 3-5 percent. They will move their capitals in the El Dorado of drug manufacturing and, quickly and smoothly, the offer of medicine will grow on the market, the prices will go down, and the profits in the pharmaceutical industry will decrease.

Too good to be true. Maybe it happens this way in a primitive capitalism, where the market is open to a huge number of small factories that operates at a low technological level, ruled by Adam Smith's "invisible hand," in certain ideal conditions. All the economic agents may enter and leave freely the market; all the buyers and sellers have access to all the relevant data, being equally able to make the most rational transactions; the balance between offer and demand maintains through the mechanism of the market, either smoothly or violently. Nowadays, only few people are still so ignorant and naive to imagine that a small investor can fight against the giants of the pharmaceutical industry or that Boeing, General Motors or Microsoft could transfer quickly and easily their operations in drug factories and stores. Consequently, the privilege of the pharmaceutical giants to control prices and to make "unreasonably" high profits is very solid. Let us read another story, a true story about the "free market" in the drug industry.

GLAXOSMITHKLINE, BRISTOL-MYERS SQUIBB, AND AIDS IN AFRICA

In 2004, the UN estimated that the previous year 5 million more people around the world had contracted the AIDS virus, 3 million have died, and 40 million people were living with the infection. Seventy percent, or about 28 million of these, lived in sub-Saharan Africa, where the epidemic was at its worst. Sub-Saharan Africa consists of the 48 countries and 643 million people who reside south of the Saharan desert. In 16 of these countries, 10 percent are infected with the virus. In six other nations, 20 percent are infected. The UN predicted that in these six nations two-thirds of all 15-year-olds would eventually die of

AIDS and in those where 10 percent were infected, half of all 15-year-olds would die of AIDS.

For the entire sub-Saharan region, the average level of infection among adults was 8.8 percent. Forty percent of Botswana's population was infected, 34 percent of Zimbabwe's, 31 percent of Lesotho's, and 33 percent of Swaziland's. Family life has been destroyed by the deaths of hundreds of thousands of married couples, who left more than 11 million orphans to fend for themselves. Gangs and rebel armies forced thousands of orphans to join them. While crime and violence were rising, agriculture was in decline as orphaned farm children tried desperately to remember how their dead parents cultivated the farms they now had to manage on their own. Labour productivity had been cut by 50 percent in the hardest-hit nations, school and hospital systems were decimated, and entire national economies were on the verge of collapse.

With its huge burden of AIDS illness, African nations desperately needed medicines, both antibiotics to treat the many opportunistic diseases that strike AIDS victims and HIV anti retroviruses that can indefinitely prolong the lives of people with AIDS. Unfortunately, the people of sub-Saharan Africa could not afford the prices that the major pharmaceutical drug companies charged for their drugs. The major drug companies, for example, charged \$10,000 to \$15,000 for a year's supply of the anti retroviruses they marketed in the US. Yet the average per person annual income in sub-Saharan Africa posed a major moral problem for the drug companies of the developed world: How should they respond to the growing needs of this terribly destitute region of the world? These problems were especially urgent for the companies that held patents on several AIDS antiretroviral drugs, such as GlaxoSmithKline [GSK] and Bristol-Myers Squibb [BMS].

GSK, a British pharmaceutical company founded in 1873, with 2003 revenues of \$38.2 billion and profits of \$8 billion, held the patents to five antiretroviral drugs it had created. Formed from the merger of three large drug companies (Glaxo, Burroughs Wellcome, and SmithKline Beecham), it was one of the world's largest and most profitable companies. BMS, an American pharmaceutical company founded in 1858, was also the result of mergers (between Squibb and Bristol-Myers). It had 2003 profits of \$3.1 billion on revenues of \$20.8 billion and had created and now held the patents to two antiretroviral drugs.

Although AIDS was first noticed in the US in 1981, when the CDC noted an alarming increase of a rare cancer among gay men, it is now known to have afflicted a Bantu male in 1959, and possibly jumped from monkeys to humans, centuries earlier. In 1982, with 1,614 diagnosed cases in the US, the disease was termed AIDS (for "acquired immune deficiency syndrome"), and the following year French scientists identified HIV (Human Immunodeficiency Virus) as its cause.

HIV is a virus that destroys the immune system that the body uses to fight off infections and diseases. If the immune system breaks down, the body is unable to fight off illnesses and becomes afflicted with various "opportunistic diseases" – deadly infections and cancers. The virus, which can take up to 10 years to break down a person's immune system, is transmitted through the exchange of body fluids including blood, semen, vaginal fluids, and breast milk.

The main modes of infection are through unprotected sex, intravenous drug use, and child birth. In 1987, Burroughs Wellcome (now part of GSK) developed AZT, the first F.D.A.-approved antiretroviral, that is, a drug that attacks the HIV virus itself. When Wellcome priced AZT at \$10,000 for a year's supply, the company was accused of price gouging, forcing a price reduction of 20 percent the following year. In 1991, BMS developed didanosine, a new class of antiretroviral drug called nucleoside reverse transcriptase inhibitors. In 1995, Roche developed saquinavir, a third new class of antiretroviral drug called a protease inhibitor, and the following year Roxane Laboratories announced nevirapine, another new class of antiretroviral called nonnucleoside reverse transcriptase inhibitors. By the middle 1990s, drug companies had developed four distinct classes of antiretroviral drugs, as well as several drugs that attacked the opportunistic diseases that afflict AIDS patients.

In 1996, Dr. David Ho was honoured for his discovery that by taking a combination – a "cocktail" – of three of the four classes of antiretroviral drugs, it is possible to kill off virtually all of the HIV viruses in a patient's body, allowing the immune system to recover, and thereby effectively bringing the disease into remission. Costing upwards of \$20,000 a year (the medicines had to be taken for the rest of the patient's life), the new drug treatment enabled AIDS patients to once again live normal, healthy lives. By 1998, the large drug companies would have developed 12 different antiretroviral drugs that could use in various combinations to form the "cocktails" that could bring the

disease into remission. The combination drug regimes, however, were complicated and had to be exactly adhered to. Several dozen pills had to be taken at various specific times during the day and the night, every day, or the treatment would fail to work and the patient's HIV virus could become resistant to the drugs. If the patient then spread the disease to others, it would give rise to a drug-resistant version of the disease. To ensure patients were carefully following the regimes, doctors or nurses carefully monitored their patients and made sure patients took the drugs on schedule. In 1998, as more US AIDS patients began the new combination drug treatment, the number of annual AIDS deaths dropped for the first time in the US.

Globally, however, the situation was not improving. By 2000, according to the UN, approximately 5 million people were infected with AIDS each year, bringing the worldwide total to about 34,300,000, more than the entire population of Australia. Approximately 3,000,000 adults and children died of AIDS each year.

The price of the new combination antiretroviral treatments limited the use of these drugs to the US and other wealthy nations. Personal income in sub-Saharan Africa was too low to afford what the combination treatments cost at that point. Yet the countries of sub-Saharan Africa were emerging as the ones most desperately in need of the new treatments. Of the 5 million annual new cases of AIDS, 4 million – 70 percent – were located in sub-Saharan countries.

Numerous global health and human rights groups – such as Oxfam – urged the large drug companies to lower the prices of their drugs to levels that patients in poor developing nations could afford. By 2001, a combination regime of three antiretroviral AIDS drugs still cost about \$10,000 a year. Although the formulas for making the antiretroviral drugs were often easy to obtain, few poor countries had the ability to manufacture the drugs. Besides, in most nations that had the capacity to manufacture drugs, the large pharmaceutical companies of the developed world had obtained “patents” that gave them the exclusive right to manufacture those drugs, in effect making the drug formulas the private property of the large drug companies.

GSK, BMS, and the other big drug companies did not at this time want to lower their prices. First, they argued that it was better for poor countries to spend their limited resources on educational programs that might prevent new cases of AIDS than on expensive drugs that would merely extend life for the small number of patients that might receive

the drugs. Second, they argued that the combination drug "cocktails" had to be administered by hospitals, clinics, doctors, or nurses who could monitor patients to make sure they were taking the drugs according to the prescribed regimes and to ensure that drug-resistant versions of the virus did not develop. But most AIDS patients in developing nations such as those in sub-Saharan Africa, the big drug companies argued, had limited access to medical personnel. Third, they argued, the development of new drugs was extremely expensive. The cost of the research, development, and testing required to bring a new drug to market, they claimed, was between \$100 million and \$500 million. Besides the research involved, new drugs had to be tested in three phases: Phase I trials to test for initial safety; Phase II trials to test to make sure the drugs work; and Phase III trials that were wide-scales tests on hundreds of people to determine safety, efficacy, and dosage. If the big drug companies were to recover what they have invested in developing the drugs they marketed, and were to retain the capacity to fund new drug development in the future, they argued, they had to maintain their high prices. If they started giving away their drugs, they would stop making new drugs. Finally, the drug companies of the developed nations feared that any drugs they discounted or gave away in the developing world would be smuggled back and sold in the US and other developed nations.

Critics of the drug companies were not convinced by these arguments. Doctors Without Borders – a group of thousands of doctors who contributed their services to poor patients in developing nations around the world – said that although prevention programs were important, nevertheless hundreds of thousands of lives – even millions – could be saved if drug companies lowered their antiretroviral and opportunistic disease drug prices to levels poor nations could afford. Moreover, a September 2003 report by the International AIDS Society stated that studies in Haiti, Brazil, Thailand, and South Africa showed that patients in remote rural areas adhered exactly to their drug regimes with the help of low-skilled paramedics and that the development of resistance was not a major problem. In fact, in the US 50 percent of AIDS patients had developed drug resistance but only 6.6 percent of AIDS patients studied in developing nations had developed resistance. By now, some of the antiretroviral [ARV] combination treatments were being combined into blister packs that were easier to administer and monitor.

Other critics challenged the financial arguments of the drug companies. The cost estimates of new drug development used by the drug companies, they claimed, were inflated. For example, the figure of \$500 million, that drug companies often cited as the cost of developing a new drug, was based on a study that inflated its cost estimates by doubling the actual out-of-pocket costs companies invested in a drug, to account for so-called “opportunity” costs (what the money would have earned if it had been invested in some other way). Moreover, these cost estimates assumed that the drug was being developed from scratch, when in fact most of the new drugs marketed by companies were based on research conducted for other drugs already on the market or on research conducted by universities, government, and other publicly funded laboratories. Critics also questioned whether companies would be driven to stop investing in new drugs if they lowered the price of their AIDS drugs. Since 1988, the average return on equity of drug companies averaged an unusually high 30 percent a year. Public Citizen, in a report entitled “2002 Drug Industry Profits”, noted that the ten biggest drug companies had total profits in 2002 of \$35.9 billion, equal to more than half of the \$69.6 billion in profits netted by all other companies in the Fortune 500 list of companies (the 500 largest US companies). The ten big drug companies made 17 cents for every dollar of revenue, while the median earnings for other Fortune 500 companies was 3.1 cents per dollar of revenue; the return on assets of the big drug companies was 14.1 percent while the median for other companies was 2.3 percent. During the 1990s, the big drug companies in the Fortune 500 had a return on revenues that was 4 times the median of all other industries, and in 2002, it was at almost 6 times the median. GSK itself had a 2003 profit margin of 21 percent, a return on equity of 122 percent, and a return on assets of 26 percent; BMS had a profit margin of 19 percent, return on equity of 36 percent, and return on assets of 14 percent. These figures, critics argued, showed that it was well within the capacity of the big drug companies to lower prices for AIDS drugs to the developing nations, even if a small portion of these drugs ended up being smuggled back into the US.

GSK, BMS, and the other big drug companies, however, held their ground. Throughout the 1990s, they had lobbied hard to ensure that governments around the world passed legislation that protected their property rights in the medicines they had created. Before 1997, countries had different protections on so-called “intellectual property”

(intellectual property consists of intangible property such as drug formulas, designs, plans, software, new inventions, etc.). Some countries, like the US, gave drug companies the exclusive right to keep anyone else from making their newly invented drugs for a period of 15-20 years. (This right was called a "patent".) Other countries allowed companies fewer years of protection for their patents, and many developing countries (where little research was done and where few things were invented) offered no protection at all, considering intellectual property as something that belonged to everyone and so, something that should not be patented. Some countries, like India, offered patents that protected the process by which a drug was manufactured, but allowed companies to make the same drug formula if they could figure out another process by which to make it.

Arguing that research and development would stop if new inventions, such as drugs, were not protected by strong laws enforcing their patents, GSK, BMS, and the other big drug companies intensely lobbied the World Trade Organization to require all WTO members to provide uniform patent protections on all intellectual property. Pressured by the governments of the large drug companies (especially the US), the WTO in 1997 adopted an agreement known as TRIPS, shorthand for Trade-Related Aspects of Intellectual Property Rights. Under the TRIPS agreement, all countries that were members of the WTO were required to give patent holders (such as drug companies) exclusive rights to make and market their inventions for a period of 20 years in their countries. Developing countries – like India, Brazil, Thailand, Singapore, China, and the sub-Saharan nations – were given time until 2006 before they had to implement the TRIPS agreement. Also, in a "national emergency" WTO developing countries could use "compulsory licensing" to force a company that owned a patent on a drug to license another company in the same developing country to make a copy of that drug. And in a national emergency WTO developing countries could also import drugs from foreign companies even if the patent holder had not licensed those foreign companies to make the drugs. The new TRIPS agreement was a victory for companies in developed nations, which held patents for most of the world's new inventions, while it restricted developing nations whose own laws had earlier allowed them to copy these inventions freely. The big drug companies were not willing in 2000 to surrender their hard-won 1997 victory at the WTO.

Because the AIDS crisis was now a major global problem, the UN in 2000 launched the “Accelerated Access Program”, a program under which drug companies were encouraged to offer poor countries price discounts on their AIDS drugs. GSK and then BMS joined the program, but the price discounts they were willing to make were insufficient to make their drugs affordable to sub-Saharan nations, and only a few people in a few countries received AIDS drugs under the program.

Everything changed in February 2001 when Cipla, an Indian drug company, made a surprise announcement: It had copied three of the patented drugs of three major pharmaceutical companies (BMS, GSK, and Boehringer Ingelheim) and put them together into a combination antiretroviral course of therapy. Cipla said it would manufacture and sell a year’s supply of its copy of this antiretroviral “cocktail” for \$350 to Doctors Without Borders. This was about 3 percent of the price the big drug companies, who held the patents on the drugs, were charging for the same drugs.

GSK and BMS objected that Cipla was stealing their property since it was copying the drugs that they spent millions to create and on which they still held the patents. Cipla responded that its activities were legal since the TRIPS agreement did not take effect in India until 2006, and Indian patent law allowed it to make the drugs so long as it used a new “process.” Moreover, Cipla claimed, since AIDS was a national emergency in many developing countries, particularly the sub-Saharan nations, TRIPS agreement allowed sub-Saharan nations to import Cipla’s AIDS drugs. In August 2001, Ranbaxy, another Indian drug company, announced that it, too, would start selling a copy of the same antiretroviral combination drug Cipla was selling but would price it at \$295 for a year’s supply. In April 2002, Aurobindo, also an Indian company, announced it would sell a combination drug for \$209. Hetero, likewise an Indian company, announced in March 2003 that it would sell a combination drug at \$201. By 2004, the Indian companies were producing versions of the four main drug combinations recommended by the World Health Organization for the treatment of AIDS. All four combinations contained copies of one or two of GSK’s patented antiretroviral drugs and two of the combinations contained copies of BMS’s patented drugs.

The CEO of GSK branded the Indian companies as “pirates” and asserted that what they were doing was theft even if they broke no laws. Pressured by the discounted prices of the Indian companies and by

world opinion, however, GSK and BMS now decided to further discount the AIDS drugs they owned. However, they did not lower their prices down to the levels of the Indian companies; their lowest discounted prices in 2001 yielded a price of \$931 for 1-year supply of the combination of AIDS drugs Cipla was selling for \$350. In 2002 and 2003, new discounts brought the combination price of the big companies down to \$727, still too high for most sub-Saharan AIDS victims and their governments.

With little to impede its progress, the AIDS epidemic continued in 2004. Swaziland announced in 2003 that 38.6 percent of its adult population was now infected with AIDS. The UN estimated that every day 14,000 people were newly infected with AIDS. The WHO announced that only 300,000 people in developing countries were receiving antiretroviral drugs, and of the 4.1 million people who were infected in sub-Saharan Africa only about 50,000 had access to the drugs. The WHO announced in 2003 that it would try to collect from governments the funds needed to bring antiretroviral drugs to at least 3 million people by the end of 2005.⁹

This case shows that, perhaps, the idea of a reasonable profit is not so absurd after all. Leaving the maths aside, profit is reasonable when comes out of certain business operations that bring forth a real service to society. As the Home Depot case proves, a reasonable profit does not entail a poor performance or even the inevitable ruin of a company. It is a practical option, with good commercial results. Home Depot did not neglect its profit, taking the risk of bankruptcy, but the company refused to maximize its profit taking advantage of the difficult position of its customers – pretty much as helpless as the buyers of Plasma International's blood. Sceptics objected that Home Depot's policy was not an ethical approach of business, but a shrewd PR strategy meant to create a favourable public image of the company, using credibility as a competitive advantage. It is just another way, perhaps a subtler way of maximizing profit over the long run. This is a serious objection, which we shall discuss in the next chapters. Nonetheless, one thing is certain: if we were to choose between maximizing

profits as Plasma International or Galaxywire did, exploiting the plight of some desperate people, and maximizing profit as Johnson & Johnson or Home Depot did, trying to win public trust, few of us would hesitate to choose the second strategy.

Where this discussion leads? In its pure technical and descriptive definition, the concept of business contains a few key-notions that have obvious ethical implications: profit and social needs. Hence, the idea that business ethics is an artificial, ideological intrusion in the market economy, that has no natural connection with business operations, is false. Like any other kind of important human activity, the very essence of business is ethically relevant. Seeking profitability is not in itself morally suspect. On the contrary, in a market economy, making profit is the first duty of investors and managers, the specific way they can be socially useful, attaining the objectives of their profession. Nevertheless, there are different means and methods to obtain profitability, and not all of them are equally valid from an ethical perspective, even though we assume they are all legally clean. Nor profit maximization is to blame in itself as a non-ethical approach of business, as long as it is associated with social utility and responsibility. Yet profit maximization deserves moral blame and social criticism when it makes just a few winners and many a loser. This diversity of options and alternatives in being profitable and maximizing profit represents the substance of business ethics, which seeks to define standards and conceptual frames that might help in making both rational and ethical decisions in business operations.

Acting ethically in business means to keep certain moral norms, paying respect to certain moral values. Norms and values are familiar terms of the ordinary language, which apparently everybody understands. Yet moral philosophy has to correct common sense notions of moral norms and values in some respects.

Notes

- ¹ Beauchamp, Tom L., Bowie, Norman E. & Arnold, Denis G., (Eds.), *Ethical Theory and Business*, Eight edition, Upper Saddle River, New Jersey, Pearson-Prentice Hall, 2009, pp. 90-92
- ² Ibidem, pp. 92-94
- ³ Duska, Ronald, "Whistle-blowing and Employee Loyalty", quoted in Tom Beauchamp, Norman Bowie, & Denis Arnold, *Ethical Theory and Business*, Eight edition, Upper Saddle River, N. J., Pearson / Prentice Hall, 2009, p. 158
- ⁴ Buchholz, Rogene & Rosenthal, Sandra, *Business Ethics: The Pragmatic Path beyond Principles to Process*, Upper Saddle River, N. J., Prentice Hall, 1998, pp. 168-169
- ⁵ Ibidem, pp. 98-100
- ⁶ Boatright, John, *Ethics and the Conduct of Business*, Sixth edition, Upper Saddle River, New Jersey, Prentice Hall, 2009, pp. 11 - 12
- ⁷ Michelman, James, "Some Ethical Consequences of Economic Competition", in John W. Dienhart, *Business, Institutions, and Ethics*, Oxford, Oxford University Press, 2000, p. 438
- ⁸ Velasquez, *Business Ethics: Concepts and Cases*, Sixth edition, Upper Saddle River, New Jersey, Pearson - Prentice Hall, 2006, pp. 178 - 179
- ⁹ Ibidem, pp. 158-161

3

MORAL NORMS AND VALUES

Who's gonna tell you what, how and why?

We said ethics is a philosophical inquiry, concerned with morality. But what is morality? At first glance, the answer is easy. Almost everyone would submit that, among other things, but in the first place, morality is a system of norms, which we should keep in our social relationships if we wish to commit good deeds and to be good persons. An unexpected difficulty appears when we ask for a clear example of a moral norm. Spontaneously, we would think of such rules as "Never lie," "Never steal," "Respect the old folks," "Take good care of your children," "Do not cheat your wife or husband," etc. But wait a minute. On second thought, all of these rules are also legal regulations and, for religious people, they are God's orders. It is not at all easy to find norms which are purely moral and nothing but moral rules. This is not the case with other normative fields. "Keep the Sabbath," "Receive the Eucharist," "Confess your sins to your father confessor," "Pray five times a day, turning your face to Mecca," etc. are all purely religious commandments. "Pay your taxes," "Do not take bribe," "No house search is allowed without a warrant," "Always stop the car at the red light," etc. are all clear legal regulations. "Keep this product in cool, dry places," "Never press the 'Turn on' button if the device is unplugged," "Do not stand under tall trees when it is thundering," etc. are all technical instructions. "Break a Champagne bottle when a vessel is launched," "Always wear black at funerals," "Carry your

bride in your arms across the threshold after the wedding ceremony," etc. are all traditional customs.

Since we cannot produce one single "pure" or exclusively moral norm, the only way to explain why and when a rule, such as "Never steal," has a moral meaning is to analyze the social functions and the structure of norms in general. That is why, in the first place, we must analyze some more general questions, namely: What is the meaning of the word "norm"? Which are the characteristics that make difference between a moral, a religious, and a legal norm?

What is a norm?

A norm is a pattern of behaviour, which should apply under various circumstances. Every norm is an abstract, ideal model of a specific kind of actions, which leaves aside the accidental and insignificant aspects of the social setting, to emphasize the unchangeable and important things to do or to avoid. This might hold true, but it is not enough. We must add a few specifications before stating an acceptable definition of norms.

First, even though putting into practice a norm for a long time generates certain habits, the individual must accept consciously a normative pattern and deliberately follow the rule. Thus, automatic reflexes, stereotypes, and any kind of habits – good or bad – acquired imperceptibly and unwillingly by the individual do not have a normative nature. We can train an ape to shake hands or raise its hat, but the animal is not following a social custom. Some people always give a firm handshake, but they are not all following a social rule; they merely express their true character. I always put on my left sleeve first, but I have never decided to do so, and nobody ever told me to act like this – it is only a matter of habituation.

Second, a norm is a pattern of individual behaviour, but it has a general, *super individual* significance and validity. Let us say that one might decide for himself, "I shall never drink red wine," because he thinks it could be hazardous to his heart condition. Another person never takes an important action on Tuesday, because she is superstitious. The third person is in the habit of playing lawn tennis three times a week, to keep in good physical shape. Each person has his or her own rules of behaviour, but none of these personal rules is a norm, because they do not count as social patterns of behaviour, adopted and followed by a large group of people.

Finally, a person can consciously conform to a social standard of conduct only if the rule of action is explicitly stated a super individual pattern of behaviour. The simple statistical uniformity of social stereotypes, which individuals acquire by means of imitation or social training, has nothing in common with the normative action. Most of the people on a beach drink beer and play ball. The fans of a football team cheer with joy the victory of their idols, and boo with anger their defeat. Their behaviour is uniform, but only as consequence of a mimetic attitude – a matter of social psychology.

To sum up: a norm is a rule of conduct, having a super individual validity, explicitly stated by the collective consciousness as a standard of behaviour, deliberately accepted and followed by the individuals.

Norms and freedom

A norm would be senseless if it demanded an impossible behaviour, such as "Wave your hands and fly" or "Walk on water," because nobody could do such things. A norm would also be absurd and irrational if it asked for an inevitable behaviour, such as "Do not stop breathing" or "Strive for happiness," as long as every person, by her nature, spontaneously does such things. Any norm

supposes a free agent, who *can* do something, but *does not have to* do it. Therefore, the social function of a rational norm is to determine a free agent to comply with a certain pattern of conduct, because this pattern is socially desirable, but not always spontaneously put by everybody into practice. Consequently, human freedom is the ontological ground of normative behaviour.

Freedom of will is a very complicated matter, which has always tortured the minds of philosophers, scientists, and theologians. Fortunately, we do not have to resolve now this tricky metaphysical problem, concerning how freedom is possible in this universe. Actually, we all do experience our freedom of will, each time we have the real possibility to choose between practical alternatives. Sometimes, the outcome of our choices is socially unimportant or indifferent. It is no one's business if I spend my summer holiday in the mountains or on the seashore. Nobody cares if I choose between having a dog or a cat, and I always may decide in the morning whether I drink coffee, tea or milk.

However, many other choices have serious consequences on some other people, and these choices are not socially unimportant or indifferent. It is everyone's business if I spend my summer holiday stealing cars or shooting at people in the street. You would probably agree that everybody should care if I like to torture dogs and cats or if I enjoy eating other human beings. And people would not agree that I always may decide in the evening to beat my wife up or to molest my children. As Aristotle says, man is a social animal, who by his nature lives among, and together with, other people. Social life requires a system of uniform individual behaviours, without which the coherence and continuity of society would not be possible. On the other hand, the patterns of conduct concentrate a very long collective practical experience, which cannot pass, like instincts, from one generation to the next by means of heredity, but only by means of education. Thus, the most important function of norms is the socialization of the individuals. As rules of action, the norms are supposed to establish a certain

uniformity of the individual behaviours, determining the individuals to rule consciously and willingly their lives in accordance with a social standard, proven by a long history as being able to guarantee a certain coherence and stability of the social life. As social psychologists have experimentally proven, there is in all of us a strong urge to conform to the majority. A normative pattern requires more than simple conformity, imposed by unconscious behavioural mechanisms, because it puts at work the human mind and understanding, which implies the active function of language.

The normative statements

As a matter of thought, we can be aware of a pattern of conduct by means of a normative statement – a combination of words, meaning that we ought to do something. A sentence is said to be normative when it contains at least one normative term – a word that does not refer to a material or ideal object, process or characteristic, but to a certain way of our doing or not doing something. The most common and important normative terms might help in the classification of the normative statements.

- *Ought* and *must*. “He ought to do this” or “She must do that” are *obligations* or *duties*. I must give lectures to my students; they ought to study; he must treat his parents with respect, and we all ought to drive on the right side in Europe, and on the left side in Britain.
- In their negative forms, *ought* and *must* are contained by *interdictions* or *forbiddances*, such as “He ought not to do this” or “She must not do that.” I ought not to take bribe; my students must not copy while taking written tests, and everybody is forbidden to smoke in the classroom.
- Finally, we call *permissions* sentences such as “He *may* do this” or “She is *allowed to* do that.” In a weak sense, a specific

behaviour is allowed whether nothing interferes with the free will of an individual. I may walk or catch a bus; you may drink soda, orange juice or coffee; he may write with a pencil, a fountain pen or a ball pen. In a stronger sense, a person is permitted to do something when an authority guarantees that person's right to do something. I may frankly express my beliefs because I have the constitutional right to free speech – but I may not use dirty words in public or make false allegations. I may own a car, a house or a company because our constitution guarantees the private property – but I may not own another person, etc.

The structure of norms

A norm cannot reduce to a normative statement. Any real and functional norm is a complex social relationship, which supposes a few necessary elements.

First, the *normative authority* is the social force that establishes a certain pattern of behaviour, being able to enforce it, and to make people follow the rule. For example, the state or the government are the authorities of all the legal and administrative regulations; God and the Holy Church are the source of all religious duties and forbiddances; the experts and their competence issue the technical instructions; the public opinion and tradition enforce the specific customs of a nation.

Second, the *subject* of a norm consists in a category of people, subordinated to the authority and supposed to comply with the rule. Sometimes, the subject is explicitly defined. For instance, all of the Romanian citizens must obey the Romanian laws, all the drivers in the world must follow the same rules, all the students ought to pass their exams, etc. In other cases, the subject is not clearly specified. There are norms that apply to everyone, such as “No smoking,” “Do not steal,” “Do not commit suicide,” “Pay your debts,” and so

on. Finally, there are norms that everyone must accept if one wishes to accomplish certain tasks or to belong to a certain community. It is the case of technical instructions, such as “If the device stops, press the red button,” “Take two pills after meals,” etc. or the case of traditional customs.

Third, the *application field* of a norm is a class of situations and practical contexts in which the authority demands the subject to follow a certain rule. “Do not kill” is a valid rule in times of peace, but not valid for military at war. “Take the bullet into your chest” is a rule of honour for a body guard, but only when he is on duty and the target of the bullet is his boss, whereas a doctor must give medical attendance to anyone in need, even if he is not on duty.

Fourth, the *rule of action* or the content of the norm is the specific pattern of behaviour demanded by the authority.

Finally, the normative authority enforces any effective norm by means of certain *sanctions* – punishments and rewards, as consequences of the subject’s actions, which deserve a reward if he conforms to the established standard of conduct or a punishment if he breaks the rule.

This structure of norms in general might be of great help to distinguish between moral rules and other types of norms, such as the religious commandments and legal regulations. “Do not steal,” for instance, is a religious norm for those people who believe that stealing is forbidden by God’s will. Such a divine order has its source in the Supreme Being, which is far beyond this world and above the individual. The religious norms come from a transcendent authority, endowed with the magical power to reward or to punish the believer, both in his lifetime – spent here, on earth – and after his material death, deciding the fate of his immortal soul. The religious norms are external or *heteronomous* – because the individual gets his orders from outside his conscience; a separate force is telling him what to do and not to do, and his only free option is between compliance and disobedience. We all know there are many faithful thieves – people who believe in God and are

perfectly aware of His forbiddance of theft; however, they keep on stealing, and hope that, listening to their prayers and confessions, God will forgive them in the end. But what about those people – and they are a lot nowadays – who have lost their faith in God? Most of them still accept and follow the rule “Do not steal,” even though they do not feel watched by the invisible eye of the Almighty God.

Moral norms and legal regulations

The elements we have included in the structure of norms might help to tackle the differences between law and morality from a different angle. One might say that people abstain from stealing because they are afraid of breaking the law; after all, before being an offence to God, theft is a legal offence. However, definitely this claim does not stand. Everyone must have experienced at least once a situation in which he could steal something, certain that he would escape legal punishment, but he did not steal. Such experiences show us the difference between legal and moral norms. The law is clearly heteronomous, like the religious commandments, except two important aspects. First, the legal authority is not transcendent; it belongs to this world, having different names: Parliament, Government, President, Administration, Court, etc. Secondly, the punishments given by the legal system have nothing in common with the afterlife – they all happen in this world.

A genuine moral norm is always *autonomous*: the individual follows the rule of action because his conscience, acting as an internal force, is telling him to do so. I must not steal not (only) because God forbids theft (after all, maybe God will forgive my sin or perhaps I do not believe in God), and not (only) because I am afraid of the legal punishment (let us say I am certain that nobody will ever know that I have stolen). I must not steal because I do believe that theft is wrong, and wrongdoing would make me a bad

person, and this holds true not only for me, but for everyone. The authority that establishes and enforces the moral norms is the so-called moral conscience – a complex human ability to judge what is good or bad, what is right or wrong, guiding our free will towards good and right deeds. We shall discuss later how different ethical theories try to explain the origin, the development, the power, and the limits of moral conscience. For the time being, let us emphasize once again this very important characteristic: moral norms originate in an internal (but not merely subjective) authority: the moral conscience.

The *subject* of any legal regulation is the citizen of a certain state or the member of a certain organization. Every one of us must obey the Romanian laws as long as we live in our country, and every one of us must conform to the laws of a foreign state when he or she is abroad. I must keep the deontological code of my profession, but I do not have the specific duties of a doctor, a fire fighter or a lifeguard. At present, there are no universal laws because there is no universal authority able to enforce them. The subject of any genuine moral norm is any human being; a moral norm claims to be valid for everyone. As moral duties, “Never lie,” “Never cheat,” “Never steal,” “Never kill,” etc. do not address a particular group of people, but each man and woman in the world. This does not mean that all of the moral norms really are universal. We know there are many moral duties and forbiddances specific to a certain social, cultural, and historical context. We also know there are, however, at least a few moral norms found in almost all the cultures of the world. Anyway, we have to emphasize that moral norms claim to be valid for everyone. This characteristic, called universalizability, is founded by the moral conscience, which also claims being a universal authority.

The same difference between law and morality appears as far as the *application field* of norms is concerned. The legal norm always applies to specific circumstances, and what the law does not forbid is legally permitted. The moral norms claim to be valid

under any circumstances. In the U.S.A., a man prosecuted in court may refuse to speak against himself if he calls the Fifth Amendment of the American Constitution; morally speaking, he ought to tell the truth, no matter the consequences for himself. If a man has an illegitimate child, he has no legal obligation towards that child if the court could not prove that he is the natural father; from a moral standpoint, however, he ought to take care of his child and the child's mother. There are many moments in our lives when the law does not tell us what to do or what to avoid in our behaviour. Yet there is no kind of situation with no moral significance and consequences. Every moment in our lives means something to us or to the others, and everything we do or do not do leads to certain outcomes, which could make human condition better or worse.

The clearest distinction between law and morality appears when we analyze the *rule of action* – the normative sentence that demands a specific pattern of behaviour. Both moral and legal norms are either affirmative (obligations or duties) or negative (forbiddances or interdictions). Very often, however, we notice that the law only forbids, whereas morality forbids and urges to do something. Telling lies is forbidden both by the law and by morality, but only morality urges us all to tell the truth, even though being honest could be detrimental to our personal self-interest. Let us say I know that my neighbour is a thief or that he is in the habit of molesting his children when coming home drunk. If asked in court, being under oath, I must tell everything I know about my neighbour's behaviour, but otherwise I am not legally supposed to speak. According to morality, it is my duty to interfere, trying to determine my neighbour to stop stealing or molesting his children – if necessary, by calling the police and reporting his misbehaviour. Both law and morality forbid theft, but only in the moral field we can find a norm telling us not only "Do not steal," but "Be generous, give to your peer in need from your plenty." If I stole something and proved as a thief, I would be both legally and

morally responsible. Yet no court of law shall ever prosecute, judge, and convict me because I refused to give my neighbour some money – the money he needed for paying his children's school taxes or his wife's urgent surgery, necessary to save her life. Legally clean, I should feel morally guilty of avarice and selfishness. Both the law and morality claim: "Do not kill," but only morality urges "Save a life if you can, even taking risks for your own person." I may not kill an innocent person. Whether I am a murderer, I should expect be prosecuted and convicted, but if a man, a woman or a child is in danger – drowning or closed in a burning house – it is not my legal duty to risk my own life trying to rescue the potential victim, but it is my moral duty to do so.

This leads us to an important distinction regarding the social function of law and morality. The legal norms should establish a *minimal* sociability, enforcing rules that control our hostility towards our neighbours. Without strong legal regulations, the society would be pretty much a battlefield or a jungle – Hobbes's state of nature. The moral norms try to establish a *maximum* of sociability, enforcing rules that stimulate our solidarity and compassion with our neighbours. Strong moral norms would make our world a better place to live in. To sum up, the legal norms urge us to refrain from being dangerous, injurious or prejudicial to the others, whereas the moral norms do the same thing, but they also urge us to be good, friendly and helpful to the others.

History proves that a society can survive without strong and effective moral norms; our country, at present, is a sad example of a morally confused and incoherent society. However, no complex, historically evolved society could ever survive without the force of law. That is why there is an important difference between the legal and the moral *sanctions*. First, the legal system counts on punishments, but has no rewards – if we do not consider the fact of not being punished as a reward, and leaving aside that living in a society protected by law is much better than always being the potential victim of criminals. Morality inflicts punishments for the

wrongdoing – shame, remorse, blame, contempt, isolation, etc. – but also offers rewards for the right behaviour – such as praise, gratitude, satisfaction, and joy. Secondly, the legal punishments are external and material, even physical sanctions: imprisonment, and all sorts of penalties, damage compensations, confiscations, etc. These punishments are inflicted by an external force, which constraints the convict to pay his sentence, no matter if he feels guilty and remorseful for his crime or not. The most powerful weapon of law is the external physical force. The legal norm expects the subject to obey, not necessarily to approve of it. Even though I might disapprove of one legal norm or another, because I find it stupid or unfair, as long as I keep the rule I am legally innocent. However, if I break the law, even though I might approve of it, I am guilty and I have to pay. Morality has its own external sanctions, given by the other people: blame, contempt, isolation or even exclusion from community. Yet the most important and characteristic moral sanctions are internal and spiritual: shame, remorse, regret. These feelings arouse from our moral conscience. As long as I obey the moral rule because my moral conscience approves of it, my own “inner court” shall condemn me when I break the moral law, forgetting about my duties.

The differences between moral rules and legal regulations explain why, so often, certain matters get opposite solutions from an ethical and a legal perspective. As John Boatright says, “approval from a company’s legal department does not always assure a successful legal resolution, and companies have prevailed in court only to suffer adverse consequences in the marketplace. As a practical matter, then, managers need to consider both the ethical and legal aspects of a situation in making a decision for many reasons.”¹ There are several reasons for that. First, the law is inappropriate for regulating certain aspects of business activity. Not everything that is immoral is illegal. Some ethical issues in business concern interpersonal relations at work or relations between competitors, which would be difficult to regulate by law.

Second, the law is often slow to develop in new areas of concern. The law is primarily reactive, responding to problems that people in the business world can anticipate and deal with long before they come to public attention. Good examples are sexual harassment or the legal protection of whistle blowers. Third, the law itself often employs moral concepts that are not precisely defined, so that it is impossible in some instances to understand the law without considering matters of morality. Examples of imprecisely defined legal concepts are the requirement of *good faith*, “fair dealing,” “best effort,” and “due care.” A fourth argument, closely related to the preceding one, is that the law itself is often unsettled, so that whether some course of action is legal must be decided by the courts. And in making a decision, the courts are often guided by moral considerations. Fifth, a pragmatic argument is that the law is a rather inefficient instrument, and an exclusive reliance on law alone invites legislation and litigation where it is not necessary. Although business leaders lament the explosion of product-liability suits by consumers injured by defective products, for example, consumers are left with little choice but to use the legal system when manufacturers themselves hide behind “If it’s legal, it’s morally okay.” Adopting this motto, then, is often short sighted, and businesses may often advance their self-interest more effectively by engaging in greater self-regulation that observes ethical standards.²

The next two cases illustrate from different angles how legal matters conflict with ethical standards, showing that “legally clean” does not always mean “ethically justified.”

TEXACO IN THE ECUADOREAN AMAZON

The Ecuadorean Amazon is one of the most biologically diverse forests in the world and is home to an estimated 5 percent of Earth’s species. [...] Ten thousand feet beneath the Amazon floor lies one of Ecuador’s most important resources: rich deposits of crude oil. [...] For 20 years

American oil companies, lead by Texaco, extracted oil from beneath the Ecuadorean Amazon in partnership with the government of Ecuador. They constructed 400 drill sites and hundreds of miles of roads and pipelines, including a pipeline that extends for 280 miles across the Andes. Large tracts of forest were clear-cut to make way for these facilities. [...]

Officials estimate that the primary pipeline alone has spilled more than 16.8 million gallons of oil into the Amazon over an 18-year period. Spills from secondary pipelines have never been estimated or recorded; however, smaller tertiary pipelines dump 10,000 gallons of petroleum per week into the Amazon, and production pits dump approximately 4.3 million gallons of toxic production wastes and treatment chemicals into the forest's rivers, streams, and groundwater each day. (By comparison, the Exxon Valdez spilled 10.8 million gallons of oil into Alaska's Prince William Sound.) Significant portions of these spills have been carried downriver into neighbouring Peru.

Critics charge that Texaco ignored prevailing oil industry standards that call for the reinjection of waste deep into the ground. Rivers and lakes were contaminated by oil and petroleum; heavy metals such as arsenic, cadmium, cyanide, lead, and mercury; poisonous industrial solvents; and lethal concentrations of chloride salt, and other highly toxic chemicals. The only treatment these chemicals received occurred when the oil company burned waste pits to reduce petroleum content. Villagers report that the chemicals return as black rain, polluting what little freshwater remains. What is not burned off seeps through the unlined walls of the pits into the groundwater. Cattle are found with their stomachs rotted out, crops are destroyed, animals are gone from the forest, and fish disappears from the lakes and rivers. Health officials and community leaders report adults and children with deformities, skin rashes, headaches, dysentery, infections, respiratory ailments, and disproportionately high rates of cancer. In 1972, Texaco signed a contract requiring to turn over all of its operations to Ecuador's national oil company, Petroecuador, by 1992. Petroecuador inherited antiquated equipment, rusting pipelines, and uncounted toxic waste sites. Independent estimates place the cost of cleaning up the production pits alone at \$600 million. From 1995 to 1998, Texaco spent \$40 million on cleanup operations in Ecuador. In exchange for these efforts, the government of Ecuador relinquished future claims against the company.

Numerous international accords – including the 1972 Stockholm Declaration on the Human Environment signed by over 100 countries, including the United States and Ecuador – identify the right to a clean and healthy environment as a fundamental human right and prohibit both state and private actors from endangering the needs of present and future generations. Ecuadorean and Peruvian plaintiffs, including several indigenous tribes, have filed billion-dollar class-action lawsuits against Texaco in U.S. courts under the Alien Tort Claims Act (ACTA). Enacted in 1789, the law was designed to provide noncitizens access to U.S. courts in cases involving a breach of international law, including accords. Texaco maintains that the case should be tried in Ecuador. However, Ecuador's judicial system is notoriously corrupt [. . .] and lacks the infrastructure necessary to handle the case (e.g., the city in which the case would be tried lacks a court house). Texaco defended its actions by arguing that it is in full compliance with Ecuadorean law and that it had full approval of the Ecuadorean government.

In May 2001, U.S. District Judge Jed Rakoff rejected the applicability of the ACTA and dismissed the case on grounds of *forum non conveniens*. Judge Rakoff argued that since “no act taken by Texaco in the United States bore materially on the pollution-creating activities,” the case should be tried in Ecuador and Peru. In October 2001, Texaco completed a merger with Chevron Corporation. Chevron and Texaco are now known as Chevron Texaco Corporation. In August 2002, the U.S. Court of Appeals for the Second Circuit upheld Judge Rakoff's decision.³

This is a clear case of conflict between legal technicalities, which can exonerate one corporation of tough legal sanctions, and the ethical standards of decency and integrity in business. It also shows that legal verdicts, taken by judges, frequently entail ethical debates and quandaries. From a strict legal point of view, Judge Rakoff could decide either in favour or against the interest of Texaco. He decided to support the corporation on certain ethical grounds; yet many observers and commentators of the case accused Judge Rakkof of immorality. As for Texaco, even though it kept the convenient legal regulations from Ecuador, from an ethical

perspective the company had a loss of credibility, in an industry already stained by a very bad environmental record. The next case illustrates a different kind of disharmony between legislators and ethics: sometimes, good intentions materialize in legal regulations that entail absurd, perverse consequences.

LEGAL REGULATIONS AND ABSURD CONSEQUENCES

This lack of nuance in the absolute rights approach is especially problematic when the costs of removing certain amounts of pollution are high in comparison to the benefits that will be attained. Consider the situation of a pulp business as reported by its president:

Surveys conducted along the lower Columbia River since completion of primary treatment facilities at our mills show that water-quality standards are being met and that the river is being used for fishing, swimming, water supply, and recreation. In all respects, therefore, the 1985 goals of the Federal Water Pollution Control act are presently being met [in 1975]. But the technical requirements of the act call for installation of secondary treatment facilities at our mills at Camas and Wauna. The cost will be about \$20 million and will not result in any measurable improvement of water quality on the river.

On the contrary, the total environmental effect will be negative. We calculate that it will take about \$7 million kwh of electricity and nearly 8,000 tons of chemicals to operate these unnecessary facilities. Total power requirements will involve burning 90,000 bbl/year of scarce oil, in turn creating 900,000 lb of pollutants at the generating source. [. . .] Similar trade-offs occur in the field of air-control technology. For example, moving from 98 percent to 99.8 percent removal of particulate matter requires four times as much purchased energy as it took to get from zero to 98 percent control.⁴

Protection of environment is in itself a praiseworthy idea; nonetheless, enacting legal regulations, which cause even more serious damages to the environment, is a short sighted approach of legislation, that deserves ethical criticism. Perhaps one the most

striking examples of conflict between morality and legality might be the next almost incredible story.

KPMG AND THE TAX SHELTER INDUSTRY

In the 1990s, KPMG, one of the “big four” accounting firms, began offering tax shelters to corporations and wealthy investors. In addition to standard audit and consulting services, KPMG aggressively developed and marketed a number of innovative ways for clients to avoid taxes. Not only did individuals and businesses reduce taxes on billions of dollars of gains, but KPMG partners pocketed many millions for their assistance.

Acting like any business developing a new product, KPMG established a “Tax Innovation Centre” to generate ideas and to research the accounting, financial, and legal issues. Previously, tax shelters had been individualized for particular clients, but the new ones were intended to be generic, mass-marketed products. Once a strategy was approved, it was energetically promoted to likely clients by the firm’s sales force. KPMG tax professionals were turned into salespeople. They were given revenue targets and urged to use telemarketing and the firm’s own confidential records to locate clients. The strategies – which bore such acronyms as OPIS, BLIPS, FLIP, and SOS – generally involved complicated investment with cooperating foreign and offshore banks that generated phantom losses that could be used to offset capital gains or income from other investments. The shelters were accompanied by opinion letters from law firms that assessed their legality. The gain to KPMG and their clients and the loss to the U.S. Treasury were significant. The four main tax shelters marketed by the firm generated over \$11 billion in tax deductions for clients, which yielded at least \$115 million in fees for KPMG and cost the government \$2.5 billion in lost tax revenue.

During the period in which KPMG tax shelters were sold, no court or Internal Revenue Service (IRS) ruling had declared them illegal. However, KPMG failed to register the shelters with the IRS as required by law. Registration alerts the tax authorities to the use of the shelters and permits them to investigate their legality. One KPMG partner attributed this failure to a lack of specific guidance by the IRS on the

rules for registration and the agency's lack of interest in enforcing the registration requirement. Furthermore, this partner calculated that for OPIS, the firm would pay a penalty of only \$31,000 if the failure to register were discovered. This amount was more than outweighed by the fees of \$360,000 for each shelter sold.

Until the courts of Congress explicitly outlaw a tax shelter, the line between legal and illegal tax strategies is often difficult to draw. The IRS typically employs the "economic substance" test: Do the transactions involved in a tax shelter serve a legitimate investment objective or is their only effect to reduce taxes? A tax shelter that offers no return beyond a tax saving is abusive in the view of the IRS. However, an IRS ruling is not legally binding until it is upheld by the courts, and the courts have occasionally held some shelters to be legal even if they do not involve any risk or potential return. One reason for such decisions is that tax shelters typically involve legitimate transactions combined in unusual ways. As one observer notes, "Most abusive shelters are based on legal tax-planning techniques – but carried to extremes. That makes it hard to draw sharp lines between legitimate tax planning and illicit shelters." Even when a shelter like those sold by KPMG is found to be legal, a tax saving is almost always the only outcome. According to an IRS commissioner, "The only purpose of these abusive deals was to further enrich the already wealthy and to line the pockets of KPMG partners."

When a tax shelter is found by the court to be abusive, the usual outcome is simply a loss of the tax advantage so that the client pays what would be owed otherwise plus any penalties. The issuer is seldom sanctioned. KPMG and other marketers of tax shelters generally protect themselves, first, by having the client sign a statement affirming that he or she understands the structure of the transaction and believes that it serves a legitimate business purpose. This makes it more difficult for the client to sue the firm. KPMG also sent all related documents to its lawyers in order to protect them from disclosure by claiming lawyer-client privilege.

Although some partners at KPMG thought that the tax shelters were illegal and raised objections, others argued for their legality – and, in any event, their shelters were an immensely profitable part of the firm's business. Aside from the huge fees, the motivation to market the shelters came from the KPMG culture, which *New York Times* business reporter Floyd Norris characterized as that of a "proud old lion."⁵

For those who believe that “If it’s legal, it is ethical too,” this case should be a reminder. High legal competence used for cheating the tax authorities fails to pass even the lowest ethical standards. In comparison to the “experts” from KPMG, Mr. Sly with his little tricks looks like an almost decent, honest businessperson and Mr. Levin’s Plasma International might appear like a charity organization. This kind of situation upholds the opinion that some profits are not “reasonable” from a moral point of view. People call unscrupulous those individuals and companies that do not hesitate to use any available means to maximize their profit; they lack moral principles.

Moral principles

As said earlier, freedom of will is the foundation of fully developed morality. We act morally only when we obey a rule coming from the inside of our conscience, as far as we truly believe that every person should do the same, under any circumstances, because it is right. This peculiar sort of self-legislation raises difficult questions, such as, “How does the moral subject know what is the right thing to do when he finds himself in atypical, unforeseen situations?” Freedom is incompatible with a complete list of patterns of behaviour, strictly ruling every moment in our lives. We do not live anymore in a primitive society, whose simple and precarious life could be, as, in fact, was, strictly ruled only by traditional customs, enforced by a strong religious authority. The ancient myths were alive in the primitive cultures, and the glorious deeds of Gods showed to the people how to behave, imitating the divine patterns. Our life is much more complicated and sometimes unpredictable. We all know and agree that a moral person always should keep her promises. However, what happens if I have made a promise, not

knowing all the outcomes of keeping it? For instance, let us say I have promised a friend to lend him some money, after he told me his wife needs an expensive medication. After a while, I find out that, in fact, he needs that money to buy an expensive gift to his mistress, to pay some gambling debt or to buy a gun, planning to commit suicide. Should I still keep my promise? The norm says: "Do not kill," and I fully agree this rule is right. But what should I do if a psychopath or a cold blood murderer was threatening my daughter in front of me? Or if I happen to sit just beside a suicidal terrorist, who is preparing to blow up an airplane, and the only way I could stop the disaster was to shoot him dead? I do believe that each moral person should treat with respect his parents; but what is the right thing to do if my father was a thief? a drunkard? if he was in the habit of abusing and beating my mother up? if he was mentally ill?, etc.

Sometimes, we find ourselves in tricky situations, when we have to deal with a conflict between our purposes, which entails a conflict between different norms. For example, I must protect my family – but I also ought to tell the truth. I find out my son has raped a young girl or that he was a member of a gang, who steal cars and terrorize the neighbourhood. What should I do? Must I keep silence, to protect my son, or should I report him to the police?

Under such complicated and atypical circumstances, the moral subject has to take decisions on his own. He cannot simply apply an abstract and unchangeable pattern of behaviour, condensed in just a few words: "Never lie," "Never steal," "Never cheat," and so on. As pieces of self-legislation, one should compare, evaluate, and order the moral norms into a hierarchy. These operations require a super rule or a meta-norm, always pointing to Justice, just like a compass that is always pointing to the North. This supreme law is

the moral principle – a universal rule that guides the moral choices of the free will. The most common moral principle is the so-called Golden Rule: “Do unto others what you would like the others do unto you.” John Maxwell collected a significant list of variations on the golden Rule:

Christianity: “Whatever you want men to do to you, do also to them.”

Islam: “No one of you is a believer until he loves for his neighbour what he loves for himself.”

Judaism: “What is hateful to you, do not do to your fellow man. This is the entire Law; all the rest is commentary.”

Buddhism: “Hurt not others with that which pains yourself.”

Hinduism: “This is the sum of duty; do naught unto others what you would not have them do unto you.”

Zoroastrianism: “Whatever is disagreeable to yourself, do not do unto others.”

Confucianism: “What you do not want done to yourself, do not do to others.”

Bahai: “And if thine eyes be turned towards justice, choose thou for thy neighbour that which thou chooseth for thyself.”

Jainism: “A man should wander about treating all creatures as he himself would be treated.”

Yoruba Proverb (Nigeria): “One going to take a pointed stick to pinch a baby bird should first try it on himself to feel how it hurts.”⁶

Despite its almost universal recognition, the Golden Rule is vulnerable in some respects. Nevertheless, after a critical analysis, this principle may strengthen to become indeed valuable. We shall discuss later other moral principles, argued by moral philosophers.

How does the moral subject know that his rule of action has a general meaning and a super individual validity, not being just his own subjective preference? How could he be sure that everyone else should approve of the same moral principle? How to explain the common, but striking fact that so often we know what is the right thing to do, and yet we do something else? These might be the

most difficult ethical questions, and our search for an answer will lead us to another fundamental topic of moral philosophy: the concept of value.

The concept of value

The main function of norms in the social life is the socialization of individuals. Having to live together, people must conform to certain patterns of behaviour, set up by specific authorities, and enforced by means of specific sanctions. Most of the social norms originate into an external authority: God and the Church, the State, the Government, the public opinion or the experts. In its long history, morality has grounded on religion, tradition or wise men's experience, and even nowadays, there are moral norms that claim to be valid by virtue of such external authorities. In its turn, the moral development of the individual also begins with the conformity to an external authority – the parents and the other members of the family, the schoolteachers, the neighbours, etc. But the fully developed moral condition requires an internalization of norms, so that the moral subject does not obey anymore the rules he is given by an external force, but the rules established by his own, inner moral conscience.

What is this moral conscience and what does it have to say? Does it express our personal interests, wishes, and dreams, defining each one of us as an individual, or does it demand us to do our duties as human beings? Sometimes, the inner voice is flattering us: "You don't have to be ashamed of yourself. After all, you must protect your own interest. Everybody does what you did. You don't have to take care of the others. It's not such a big fault. You didn't kill anybody. If it were not you, someone else would have taken the opportunity. We are all humans, not saints, for Christ's sake! You are not the worst guy in this dirty world," etc. Our Self speaks like that, always pleading "not guilty." However, we also have to listen

to another inner voice, which speaks very unpleasant words, like a prosecutor: "You ought to be ashamed. Don't lie to yourself. You know it was wrong what you have done. You are a coward; a liar; a cheater. You behaved like a fool. You took an unfair advantage. You claim to be treated by the others like a human being, but you've proved to be a selfish, irresponsible animal," and so on. This is the moral conscience, coming from the inside, but speaking like someone else, who is watching and judging us, and telling us what we ought to do.

Why must we listen to this annoying inner voice, and how does it compel us to obey its orders or to feel guilty and ashamed each time we break its orders? The moral conscience demands, "Never lie. Always tell the truth." Why should I obey? I should abide not only because telling lies is, sometimes, a legal offence and, consequently, as a liar I could be legally punished, and not only because the other people blame untrustworthy persons, punishing them with their contempt and distrust, but mainly because it is worth telling the truth. As reasonable and responsible persons, we think that truth is a value – something that deserves the respect of every human being. Every value is normative by itself. If I am convinced that honesty is a virtue, and that any honest person deserves respect and recognition, whereas dishonesty is a sin, and any dishonest person deserves blame and contempt, then implicitly I must accept, as my own personal decision, that I ought to tell the truth and that I should not lie. At a superficial glance, we might think that we have solved the most difficult question: How is possible the moral self-legislation? Our personal values demand us to choose and to praise always those actions which support what it is worth to exist and to increase in this world, and to avoid, to despise, and, if possible, to diminish or even to eliminate those actions which undermine our values. Unfortunately, we have to take other difficult steps. We still must answer many other tricky questions, beginning with this one: What is the meaning of the word "value"?

This is an old question in moral philosophy. Recently, the study of values separated as a branch of its own, called axiology. Despite the efforts made to explain the nature and the functions of values, there is not for the time being a standard axiological theory. We shall review briefly the most significant theories of values.

Subjectivism

One thing is clear from the beginning: as a sentient being, each man and woman is aware of his or her needs, pleasures, preferences, and ideals. Consequently, we look at each fragment of reality not only objectively, trying to see it just as it is by itself, but we also see different things, persons, and situations in the light of our needs, expectations, and purposes. Some of them promise to fulfil our desires, determining us to have a favourable attitude towards them, whereas other things, persons, and situations threaten us with pain and frustration, rousing negative feelings towards them. In other words, as cognitive subjects we try to understand the reality as it is but, as practical subjects, we also evaluate things, persons, and situations in the light of our desires. The different fragments of reality and moments in our lives have a meaning in our mind, and a value in our heart.

A second thing is also clear. There are many differences between individuals. We do not all have the same desires, needs, wishes, and goals. One thing might be worth for someone, indifferent to someone else, and worthless or even hateful for a third person. According to common sense, the easiest way to define values is to think that value means individual preference. Beginning with Protagoras, who said that "man is the measure of all things," the subjectivist theories claim that each individual has his or her own personal values, treating value as a matter of taste. According to Buchholz and Rosenthal, "This view holds that when individuals differ on what is right or wrong, this difference is

merely one of opinion or feeling. In other words, moral statements are simply statements of opinion or feeling; they have no objective basis where their truth-value can be determined. People can never really disagree about the morality of an action, nor can they be mistaken in their moral judgments. Statements of opinion or feeling are relative; one cannot in any real way show an opinion about a moral action to be false or invalidate a particular feeling about morality.”⁷

At first sight, facts seem to confirm this point of view. Let us say John likes to play football, so football is a value for him, but not for Mathew, who likes to play lawn tennis. Aunt Mary likes soap opera, which is a value for her, but not for Uncle James, who loves classical music. Mark likes and is even addicted to coffee, which is very important in his life, but Lucy is not very fond of coffee, because she likes better a good sound sleep. There is nothing to argue about here. Each person is entitled to say: “I know better than anyone else what I like or dislike, what I love or hate, and I am the only one to judge the value of everything,” but each person must admit that everyone else has the same right to be the only judge of his or her preferences. In this subjectivist view, value has nothing to do with the evaluated object; it rests exclusively on the subject’s needs, pleasures, and tastes. Things are what they are; there is no value in them – we make things to be worth or not.

On second thought, it is not always so simple. What would you say if John liked to torture animals? If Sam was very fond of raping young schoolgirls? If Jane enjoyed being a hooker and stealing her customers’ wallets? Who would be so foolish to call “values” such things as torture, rape, prostitution or theft? There is something quite wrong with subjectivism when it deals with values. Indeed, we all have personal tastes and preferences, which are psychological processes, and each subjective attitude must be approached as a matter of fact: a person A happens to like a certain thing X, while another person B actually hates X. Values are not

psychological facts, but spiritual forms, and each value must be approached as a matter of validity. What does this mean?

First, as spiritual forms, values are not characteristic to a certain individual – Michael, Mary, Joe or Abbey – but they are characteristic to a whole community. By contrast to preferences, which are always personal, values are super individual, just like the norms that they entail. Our preferences make each one of us more or less different from the others – our values make us all the same as members of a spiritual community.

Second, value is not something which happens to exist or not, but it is something that should ever exist in this world. This distinction seems to be very obscure and “metaphysical,” but, in fact, is quite familiar to common sense. When he is in danger, the coward chooses to run, but he respects the courage and he would like to be brave. The couch potato prefers to lie for hours watching TV and growing fat, but he admits that a reasonable person should be dynamic and, inside of his soul, he respects people who exercise daily, and he would love to be strong and athletic. Very often, an ugly person hates the good-looking people, but not because she despises beauty; on the contrary, she is resentful because she admires beauty, recognizing it as a major value, which unfortunately she does not possess.

The subjectivist approach of values is in itself precarious, since it makes the difference between right and wrong, between good and evil, an arbitrary matter of taste. As long as each individual is equally entitled to define his or her own personal system of values, any rational debate in ethics becomes impossible. People who hold subjectivism, says De George, “not only refuse to judge others but also refuse to judge their own actions. Because they cannot give reasons for actions being right or wrong, they often take this position: ‘There is no objective morality,’ or ‘Morality is pure

subjective.' They consider themselves to be personally moral when they act as they believe they should. (But others may act differently and still be moral, if they believe they are acting morally.) [. . .] Pushed to its conclusion, it denies the objectivity of moral judgments; it claims that whatever anyone considers to be moral is thereby moral. It therefore abandons the universal characteristic of morality."⁸ Subjectivism is unacceptable in business activities. No business leader could justify his decision to discriminate women simply because he is gay. Choosing between exploiting children in sweatshops and refusing to make profit on behalf of their humiliation and pain is not a matter of taste, just like choosing to see a thriller or a romance at the movie theatre. A dramatic alternative, such as either big profit made with cheap, polluting technology or smaller profit, spending more on modern, less polluting technology should not be decided as one's feelings and personal opinions dictates. In business activities, managerial decisions concern a considerable number of people, directly or indirectly affected for their benefit or to their damage. Therefore, an ethical approach of business decisions is supposed to base on objective, impartial, and fair standards, no matter whether these standards happen to feel agreeable or uncomfortable, depending on each individual's tastes and preferences.

To sum up: values and individual preferences are not the same thing. Very often, our pleasures and desires conflict with our values. Subjective preferences express our Self, whereas our values belong to our spiritual identity with a certain social and cultural community. Values are not psychological facts, but spiritual forms of validity. Consequently, we are not free to assign a certain value to everything we like, but must recognize and respect those things, persons, and situations that have an intrinsic value, whether we like them or not. There must be something in the object of our evaluation, which compels us to assign it a certain value.

Objectivism

This is the central point of the objectivistic theories of values, which usually find their strongest arguments in the field of economics. If subjectivism places the whole value of a thing in the subject's needs, desires, and pleasures, objectivism reverses completely the perspective, claiming that values are properties of things, like weight, volume, density, elasticity, etc. – properties which the subject can perceive and understand or not, but even when the subject ignores it, the value still exists, inherent to the object. In this view, the perception of values is not an arbitrary and often irrational assignment, but an act of knowledge, which can be true or false.

The prototype of objectivism is the use value. A car, for example, might be worth as an automobile if and only if it possesses a series of sine qua non components – such as wheels, engine, breaks, gas pedal, clutch, etc. – as well as some necessary and measurable characteristics – such as power, speed, fuel consumption, comfort, security, and so on. One might be purely subjective when he chooses a certain model considering its colour, shape or the reputation of the producer. But the economic and technical value of a car is objectively determined by its essential properties, best known and evaluated by an expert. We also might think that a doctor is a good physician – not necessarily a good father or a good tennis player – as far as he makes a correct diagnosis and offers a competent and efficient medical attendance. We may dislike him as an individual, but we have to admit he is a good doctor, especially if recognized by other specialists.

Even when we are dealing with economic values, this line of thought – very specific to the classical economists – could be seriously misleading. According to Griffiths and Lucas, “we are in danger of reifying economics. Material objects have physical properties, such as weight, volume, chemical composition, which

they have independently of us, and it is correspondingly easy to ascribe to them an economic value, a quasi-physical property, as objective as weight. We too readily think of material goods having an absolute value, a ghostly number of pounds sterling, in the same way as they really do have an objectively ascertainable number of pounds weight or mass. [. . .] We are much less inclined to make those mistakes when we are considering the rendering of services; for they are obviously rendered to someone, and only have value because they are valued by him.”⁹

Adequate when dealing with utility, the objectivistic approach fails to explain the specific nature of spiritual values. How would it be possible to define the aesthetic value of a painting taking into account only its physical properties? What kind of material characteristics could define a good poem or an excellent novel? Who would be so foolish to choose a friend or a lover, a wife or a husband like a car or a computer, evaluating their “properties” and “performances” recommended by an expert? Finally, what kind of “objective properties” must have the good and true God, who deserves our faith and our prayers?

There is an important difference between material and spiritual values. According to Griffiths and Lucas, “material objects are ‘privative’, that is, one person’s having them does preclude another’s having them too – they are private to him, and his having them deprives anybody else’s having them too.” If you drank the whole bottle of wine, there is nothing left for your friend Peter. If Johnny spent his salary on a new boat, that money cannot buy the trip to Peru his wife Jenny wishes so much. Two brothers can share their blue jeans and their sneakers, but one cannot wear the same cloths with his brother at the same time. On the contrary, spiritual values are “non-privative,” that is, one person’s having them does not preclude another’s having them too. “We can share values [...]

without either of us having less than we would if we did not share them; whereas if we share some cake with each other, we each have less. I cannot have my cake and give it, whereas I can give you an aim in life and still have it myself.”¹⁰ One million buyers of a musical CD can fully enjoy the pleasure of listening their favourite singer or band. Pythagoras’ theorem is taught in schools since Ancient times and each pupil can have it all, not in pieces. Likewise, if one believer makes another one to believe in God, the first keeps his faith intact, whereas the second gets it all.

Objectivism is right when it claims that values are not purely subjective, but somehow objective realities. Indeed, values stand in front of our conscience like real things, somehow independent of our opinions and tastes, but – except the economic use values – truth, beauty, justice or holiness are not physical properties, inherent to material things. Even though their experience bases on a certain material ground or support, values are spiritual realities, which cannot reduce to physical properties. That is why objectivism asks the right question, but fails to give a convincing answer. The limits of both subjectivism and objectivism suggest that values are something in between the individual conscience and the evaluated object. A certain idea or statement must have some specific characteristics to be true. A certain natural or human made object must possess some specific properties to recognize as beautiful or useful. A certain person, action or human relationship must possess some specific features to praise as moral or legal. However, these specific properties of the evaluated object are not arbitrary, set up by the momentary psychological dispositions of a moody empirical person. They are defined as super individual prototypes or paradigms of truth, beauty, usefulness, goodness, justice, etc., which the individual must accept and conform to. But now we meet another tricky question: What could be the nature of such a super individual authority, capable of designing and imposing values as spiritual forms, of a general validity?

Relativism

The easiest answer to this question seems to be the solution stated by the relativistic theories, which base their claims on two undeniable facts. First, each social and cultural community establishes a spectrum of value patterns, hierarchically ordered and imposed on each member of the community by means of education and, if necessary, by the pressure of the group upon the rebels – individuals who deviate from the collective patterns. Secondly, each culture and civilization has its own specific values, which define its individuality and uniqueness. Consequently, relativism claims that values are super individual, but never universal. Values are objectively valid inside of a certain culture, but each culture defines its own spectrum of value patterns. These patterns rest, more or less, hidden to the individuals who belong to another culture or civilization.

Contrary to subjectivism, the relativistic approach holds that values are not matters of individual taste; they belong to a large cultural community and, therefore, are super individual. This view makes relativism more comprehensive than subjectivism. On the other hand, more and more people have nowadays the possibility to travel all over the world, having the direct experience of the differences between cultures and civilizations in their ways to conceive of decency, integrity, happiness, etc. People from different cultures do business differently – and have varying sets of values, moral guidelines and ethical principles to guide them through the maze of life. What might be the “right” way to act in one culture may be considered the “wrong” way in another.

Charles Mitchell helps us to grasp how important cultural variety may be in international business. “Not everyone,” says Mitchell, “views the meaning of a written contract in the same way. While Americans and Germans generally insist on intricate multi-page contracts, that are meticulously followed to the letter of the law, other cultures – especially those where personal relationships

are highly valued and contract law is rare, such as Russia, Nigeria or China – view contracts more of a statement of intention rather than a formal binding obligation with real penalties – at least as it applies to locals.”¹¹ Mitchell presents us an interesting list of examples.

GERMANY. Contracts are even more detailed than in the United States. Once signed, they are strictly adhered to by Germans – and they expect the same from you.

EGYPT. Contracts are regarded as guidelines for business relationships rather than specific performance requirements. The content may be renegotiated, revised and appended many times to reflect changing circumstances – usually on the Egyptian side. To ignore provisions of a signed contract does not carry any great moral stigma within society or law.

UNITED STATES. Signing on the dotted line, as the Americans will joke, is the first step to a court appearance. Americans would sue their mother (in fact some actually have) if they thought she had reneged on a signed deal. To renege on a written contract reveals complete ethical and moral bankruptcy. Only crooks and cheats fail to live up to contracts. Needless to say, lawyers play an important role in the drawing up of contracts – a characteristic that is offensive to many cultures that interpret the presence of attorneys as a sign of moral and ethical mistrust. Of course, it depends who is buying and who is selling.

JAPAN. Contracts are guidelines and any problems are arbitrated rather than litigated. Every contract will include a *jiji henko* clause that permits complete renegotiation if circumstances change. This is tied to the importance of giving and saving face in Japanese culture, that is, allowing plenty of wiggle room for both sides to prevent embarrassment. In fact a “gentleman’s agreement” – an informal verbal commitment from a Japanese executive – often means more than a formal written contract. To violate such an agreement would represent a greater ethical breach for the Japanese businessman (a grave loss of face) than walking away from a formal contract.

SOUTH AFRICA. This is not a litigious society. Business contracts are not overly complicated; but sometimes they are left intentionally vague to give the local party some wiggle room should things not work out. The South African legal system, which is fair and mostly uncorrupted (at least for now), usually favours the local side over the foreign side in cases of corporate and business law. South Africans will make a good faith effort to meet contract deadlines but don't feel they should be punished if their non-performance is unintentional.

RUSSIA. It is important to remember that even if you have a signed contract with a Russian firm, it may not be worth much. Russians have a different view of contracts than Westerners and see contracts more as a statement of intention than a formal, morally binding obligation with penalties. Russian business law, while improving, is still not sophisticated enough to deal with suits stemming from broken contracts. Russian business ethics are still very much in a developmental stage. In Russia, "extra-legal" processes are more the norm than legal regulations.

MEXICO. Contracts are more a matter of personal honour than a company commitment. Lawyers are useless in trying to gain compliance, which rests more on a signer's personal ethics rather than some over-arching principle of business ethics. Thus, if the person who has signed a contract should change jobs, drop dead or emigrate, you may be left holding a relatively worthless piece of paper. In such a case, re-negotiation would be expected.¹²

Especially in international business, these differences are extremely important. A company that ignores or underestimates the variety of ethical standards in different parts of the world might confront extremely difficult challenges, which sometimes lead to failure, as the next two cases show.

ITALIAN TAX MORES

The Italian federal corporate tax system has an official, legal tax structure and tax rates just as the U.S. system does. However, all similarity between the two systems ends here.

The Italian tax authorities assume that no Italian corporation would ever submit a tax return which shows its true profits but rather would submit a return which understates actual profits by anywhere between 30 percent and 70 percent; their assumption is essentially correct. Therefore, about six months after the annual deadline for filing corporate tax returns, the tax authorities issue to each corporation an "invitation to discuss" its tax return. The purpose of this notice is to arrange a personal meeting between them and representatives of the corporation. At this meeting, the Italian revenue service states the amount of corporate income tax which it believes is due. Its position is developed from both prior years' taxes actually paid and the current year's return; the amount which the tax authorities claims is due is generally several times that shown on the corporation's return for the current year. In short, the corporation's tax return and the revenue service's stated position are the opening offers for the several rounds of bargaining, which will follow.

The Italian corporation is typically represented in such negotiation by its *commercialista* – a function that exists in Italian society for the primary purpose of negotiating corporate (or individual) tax payments with the Italian tax authorities. Thus, the management of an Italian corporation seldom, if ever, has to meet directly with the Italian revenue service and probably has a minimum awareness of the details of the negotiation other than the final settlement.

Both the final settlement and the negotiations are extremely important to the corporation, the tax authorities, and the *commercialista*. Since the tax-authorities assume that a corporation always earned more money this year than last year and never has a loss, the amount of the final settlement, i.e., corporate taxes that a company will actually pay, becomes, for all practical purposes, the floor for the start of next year's negotiations. The final settlement also represents the amount of revenue the Italian government will collect in taxes to help finance the cost of running the country. However, since large amounts of money are involved and two individuals having vested personal interests are conducting the negotiations, the amount of *bustarella* – typically a substantial cash payment "requested" by the Italian revenue agent from the *commercialista* – usually determines whether the final settlement is closer to the corporation's original tax return or to the fiscal authority's original negotiating position.

Whatever bustarella is paid during the negotiation is usually included by the commercialista in his lump-sum fee “for services rendered” to his corporate client. If the final settlement is favourable to the corporation (and it is the commercialista’s job to see that it is), then the corporation is not likely to complain about the amount of its commercialista’s fee, nor will it ever know how much of that fee was represented by bustarella and how much remained for the commercialista as payment for his negotiating services. In any case, the tax authorities will recognize the full amount of the fee as a tax-deductible expense on the corporation’s tax return for the following year.

About 15 years ago, a leading American bank opened a bank subsidiary in a major Italian city. At the end of its first year of operation, the bank was advised by its local lawyers and tax accountants to file its tax return “Italian-style”, i.e., to understate its actual profits by a significant amount. Being on his first overseas assignment, the American general manager of the bank, refused to do it. He considered it dishonest and inconsistent with the practices of his parent company in the United States.

About six months after filling its “American-style” tax return, the bank received an “invitation to discuss” notice from the Italian tax authorities. The bank’s general manager consulted with his lawyers and tax accountants who suggested him to hire a commercialista. He rejected this advice and instead wrote a letter to the Italian revenue service not only stating that his firm’s corporate return was correct as filed, but also requesting that they inform him of any specific items about which they had questions. His letter got no reply.

About sixty days after receiving the initial “invitation to discuss” notice, the bank received a formal tax assessment notice calling for a tax of approximately three times that shown on the bank’s corporate tax return; the tax authorities simply assumed the bank’s original return had been based on generally accepted Italian practices, and they reacted accordingly. The bank’s general manager again consulted with his lawyers and tax accountants who again suggested he hire a commercialista who knew how to handle these matters. Upon learning that the commercialista would probably have to pay bustarella to his revenue service counterpart in order to reach a settlement, the general manager again chose to ignore his advisors. Instead, he responded by sending the Italian revenue service a check for the full amount of taxes

due according to the bank's American-style tax return, even though the due date for the payment was almost six months hence; he made no reference to the amount of corporate taxes shown on the formal tax assessment notice.

Ninety days after paying its taxes, the bank received a third notice from the fiscal authorities. This one contained the statement, "We have received your corporate tax return for 19-- and have determined that the lira equivalent of \$6 million of interest paid on deposits is not an allowable expense for federal tax purposes. Accordingly, the total tax due for 19-- is lira X." Since interest paid on deposits is any bank's largest single expense item, the new tax assessment was for an amount many times larger than that shown in the initial tax assessment notice and almost fifteen times larger than the taxes which the bank had actually paid.

The bank's general manager was understandably very upset. He immediately arranged an appointment to meet personally with the manager of the Italian revenue service's local office. Shortly after the start of their meeting, the conversation went something like this:

GENERAL MANAGER: "You can't really be serious about disallowing interest paid on deposits as a tax deductible expense."

ITALIAN REVENUE SERVICE: "Perhaps. However, we thought it would get your attention. Now that you're here, shall we begin our negotiations?"

In the end, the bank was forced to pay taxes shown on the original tax assessment, and the American manager was recalled to the United States and replaced.¹³

Obviously, the contempt of the American manager for the Italian tax mores proved to be a very bad idea for the business. Nevertheless, if we compare the ethics of the Americans and Italians in their tax payments, few people will hold they are equally justified, just as shaking hands or taking a bow are equally valid forms of meeting someone. Perhaps such a radical difference between Americans and Italians is not a big surprise. There are so many important differences between the two cultures. Comparing the American and the British cultures, one might expect to see less

radical differences. After all, the Americans are the descendants of the British colonists. Nevertheless, the next case will surprise us, making even stronger the case for cultural and ethical relativism.

FCUK GOES INTERNATIONAL

The UK fashion retail chain French Connection experienced considerable commercial success in the highly competitive UK high street during the late 1990s and early 2000s. As founder and CEO Steven Matts has claimed, one of the keys to its success in the UK has laid in the firm's aggressive advertising campaign, establishing the acronym *fcuk* and its connotative meaning at the core of their slogans.

The *fcuk* slogan appears to appeal to French Connection's target audience of young consumers and the repeated criticism of their advertising campaigns by the Advertising Standards Authority (ASA) in the UK has only boosted the "naughty" image of the brand. In the course of 2001, French Connection not only expanded its product range into cosmetics and drinks, but also made a further move towards expanding its international business.

One of the main target markets for French Connection has been the USA. In their effort to establish a global brand, the company has used the same marketing campaigns used in the UK and faced considerable problems. Even in more liberal places, such as New York, San Francisco or Los Angeles, public outrage was stirred up by the *fcuk* campaigns. Thus, for instance, some of New York's taxi drivers refused to have the advertisement on their cabs. Earlier on, the company had similar reactions in Singapore.

Steve Rabosky, the chief creative officer of the advertising firm Saatchi & Saatchi in Los Angeles, said of the issue: "The problem over here [in the USA] is it is going to get a lot of censorship. This society is not as open as the UK. If *fcuk* goes outside New York and San Francisco, it could run into problems. Things are very politically correct over here right now. The entertainment industry is being pressured to cut back on violence and nudity, and advertising is part of that."

The risks of this provocative campaign are also boosted by the different legal frameworks in the UK and the USA. Whereas French Connection only faces one central authority, the ASA, in the UK,

censorship of advertising in the USA is the responsibility of local authorities. Although in the initial stages of the campaign they had no conflicts with such bodies in New York or San Francisco, expanding their business to Salt Lake City or Atlanta could provoke different reactions.

The *fuck* case shows that moral values and cultural norms differ significantly across the globe and that corporations have to be very careful in toning their communications to the local specifics. In the event, French Connection decided to run their provocative TV campaigns only on selected US stations such as MTV, which directly focuses on their target audience of young consumers.¹⁴

Universalism

Cultural and ethical relativism has also its weak points, subject to criticism. Anthropologists and sociologists have documented the fact that people in different cultures, as well as people within a given culture, hold divergent moral views on particular issues. The ancient Greeks did not believe that infanticide was immoral, although we believe that it is. Some members of our society believe that abortion is immoral, and others believe that it is morally permissible. These differences are examples of trans-cultural and intra-cultural relativism. However, says De George, "We should distinguish what is often called cultural relativism, which is descriptive, from ethical relativism, which is a normative position."¹⁵ Indeed, this is a very important distinction. Facts prove that different cultural communities and different historical ages take various views upon ethical standards. This is the basic idea of *cultural* relativism, grounded on *descriptive* sociological and anthropological research. But *ethics* is primarily a *normative* approach of what people should do right or wrong. That various cultures define moral decency in different ways is a fact; that all the definitions of moral decency are equally valid is quite another matter. According to DesJardins and McCall, "*cultural relativism*

acknowledges the fact that cultures disagree about many beliefs and values. If this is all that ethical relativism involves, there would be little cause for worry. But ethical relativism is not just this descriptive claim; it is a normative viewpoint that claims there can be no objective or rational standards by which we can resolve disputes and disagreements.”¹⁶

Indeed, cultures differ in their moral practices. As anthropologist Ruth Benedict illustrates in *Patterns of Culture*, diversity is evident even on those matters of morality where we would expect to agree:

We might suppose that in the matter of taking life all peoples would agree on condemnation. On the contrary, in the matter of homicide, it may be held that one kills by custom his two children, or that a husband has a right of life and death over his wife or that it is the duty of the child to kill his parents before they are old. It may be the case that those are killed who steal fowl, or who cut their upper teeth first, or who are born on Wednesday. Among some peoples, a person suffers torment at having caused an accidental death, among others, it is a matter of no consequence. Suicide may also be a light matter, the recourse of anyone who has suffered some slight rebuff, an act that constantly occurs in a tribe. It may be the highest and noblest act a wise man can perform. The very tale of it, on the other hand, may be a matter for incredulous mirth, and the act itself, impossible to conceive as human possibility. Or it may be a crime punishable by law, or regarded as a sin against the gods.¹⁷

Other anthropologists point to a range of practices considered morally acceptable in some societies but condemned in others, including infanticide, genocide, polygamy, racism, sexism, and torture. Such differences may lead us to question whether there are any universal moral norms or whether morality is merely a matter of “cultural taste.”

Even though the variety of moral practices in time and space is an undisputable fact, most ethicists reject the theory of ethical

relativism as *normative* approach. Some claim that while the moral practices of societies may differ, the fundamental moral principles underlying these practices do not. For example, in some primitive societies, killing one's parents after they reached a certain age was common practice, stemming from the belief that people were better off in the afterlife if they entered it while still physically active and vigorous. While such a practice is unacceptable in our society, we would agree with these societies on the underlying moral principle – the duty to care for parents. Societies, then, may differ in their application of fundamental moral principles but agree on the principles.

Moreover, some argue, it may be the case that some moral beliefs are culturally relative whereas others are not. Certain practices, such as customs regarding dress and decency, may depend on local custom, whereas other practices, such as slavery, torture, or political repression may be evaluated according to universal moral standards and proved wrong, despite many other differences among cultures. Simply because some practices are relative does not mean that all practices are relative. The prohibition of incest, for example, is a good proof of that.

Other philosophers criticize ethical relativism because of its implications for individual moral beliefs. These philosophers assert that if the rightness or wrongness of an action depends on a society's norms, then it follows that one must obey the norms of one's society and to diverge from those norms is to act immorally. This means that if I am a member of a society that believes that racial or sexist practices are morally permissible, then I must accept those practices as morally right. But such a view promotes social conformity and leaves no room for moral reform or improvement in a society. Furthermore, members of the same society may hold different views on practices. In all the developed countries, as well as in Romania, a variety of moral opinions exists on matters ranging from animal experimentation to abortion, euthanasia,

cloning, and so on. What constitutes right action when social consensus is lacking?

Perhaps the strongest argument against ethical relativism comes from those who assert that universal moral standards can exist even if some moral practices and beliefs vary among cultures. In other words, we can acknowledge cultural differences in moral practices and beliefs and still hold that some of these practices and beliefs are morally wrong. The practice of slavery in pre-Civil war U. S. Society or the practice of apartheid in South Africa or the total subordination of women to men in the fundamentalist Islamic countries is wrong despite the beliefs of those societies. The treatment of the Jews in Nazi society or the repression of the political dissidents in the communist regimes is morally reprehensible regardless of the moral norms of Nazi or Communist societies. For these philosophers, ethics is an inquiry into right and wrong through a critical examination of the reasons underlying practices and beliefs. As a theory for justifying moral practices and beliefs, ethical relativism fails to recognize that some societies have better reasons for holding their views than others.

This perspective encourages multinational companies to adhere to double standards in their international operations, which actually led to frequent press scandals, lawsuits and public outrage. “The relativist must claim,” say DesJardins and McCall, “there is no reasonable and objective basis for establishing that freedom is better than slavery, democracy is better than totalitarianism, heroism is better than murder, and friendship is better than hatred. The relativist must claim there is no rational ethical difference between a parent who loves and nurtures her child and the one who abuses and murders her child. [. . .] These examples suggest how dangerous such relativist conclusions can be.”¹⁸

All these weak points of *ethical* relativism lead some moral philosophers to hold a universalistic perspective. According to universalism in axiology, there must be certain basic values – such as honesty, generosity, fairness, courage, etc. – that all cultures and

all historical ages recognize. Even though different cultures cherish and promote these values in various ways, they are identical in their substance, because they condense a universal historical experience of mankind. No society could base on, and survive through, glorifying theft, murder, lying, cheating, neglecting your children, breaking promises, and so on. That is why we should postulate the necessary existence of universal values, which justify universal moral judgment. Nevertheless, we should avoid the terrible mistake of adopting an absolutist perspective, looking for some ghost values, existing in themselves, beyond the empirical world, in a realm of perfect forms of beauty, truth, good, reminding of Plato's Ideas or Hegel's Absolute Spirit. Universal values do not exist by themselves, separate from human society and history, which is always concrete and particular. We must accept only the possibility of human race to progress indefinitely towards more and more general ethical standards, capable to unify progressively different cultures and civilizations around certain basic, elementary principles. This does not mean that cultures and civilizations will ever lose their specific nature or that differences in applying universal principles under various circumstances will ever cease to exist. That is why, in my opinion, universalism in axiology should not be viewed as a positive metaphysical doctrine, but rather as an alternative to the unacceptable, excessive consequences of radical relativism.

However, even if we reject the theory of ethical relativism, it must be acknowledged that the concept raises important issues. Ethical relativism reminds us that different societies have different moral beliefs and that our beliefs are deeply influenced by culture. It also encourages us to explore the reasons underlying beliefs that differ from our own, while challenging us to examine our reasons for the beliefs and values we hold. This is an important issue in the present global economy, which makes inevitable more and more intensive contacts between different cultures and societies.

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ETHICAL THEORIES

Conceptual frameworks for rational decision making in ethical business

As said before, sometimes, moral norms conflict with the legal regulations; even moral norms may conflict under specific circumstances, each norm demanding us to do something that other moral rule generally forbids. The same often happens in the realm of values: sometimes, we must choose which value is more important than other values, deciding to promote generosity rather than justice, honesty rather than friendship or vice versa. Occasionally, confronted with complicated, delicate situations, managers, investors, employees or consumers feel confuse. They find out that good intentions are not always enough to put them on the right track, leading to the best ethical decisions and actions. That is why, under intricate circumstances, a rational ethical decision requires more than a set of strong moral norms, correlated with a set of solid moral values. Rational decision making in business ethics needs a conceptual framework, capable to support with arguments the choice of one action rather than the alternative solutions, as well as a set of methods to analyze the best possible ways to make profit, acting in accordance with moral decency. Ethical theories supply the economic agent with these instruments of rational decision, helping to find the way towards ethical conduct in business by reason and logic, besides life experience, momentary inspiration, exercised intuition or guts.

Paradoxically enough, each ethical theory seeks to develop a consistent method, whose application promises to eliminate confusion and doubt, leading us rationally toward universally valid ethical solutions. In other words, each ethical system tries to go beyond relativism, delivering us a safe path towards universally valid ethical judgments and decisions. Unfortunately, there is more than one ethical theory, each one of them claiming to be the sole complete, fully consistent and entirely true. The mere existence of these competing ethical theories is an ally of relativism, strengthening the scepticism about the possibility to approach ethics as geometry or logic, creating a universally recognized theory. No doubt, there is no such possibility. Nevertheless, a rational effort to get a deeper understanding of ethical quandaries is worth to make. Moreover, as we shall try to prove, the diversity of ethical theories does not mean total disagreement and wholly controversial notions. There are common elements and convergent ideas in all main ethical theories. Besides, given the complexity of certain business environments and situations, a pluralist approach might be a better guide than reading the situation in the unique alphabet of one and only ethical paradigm.

What are the most important types of ethical standards to apply in business activities? *Utilitarian ethic* claims that something is right to the extent it diminishes social costs and increases social benefits. *Ethic of rights*, closely associated with Kantian *duty ethic*, claims that one should always consider and respect people's rights to freedom and well-being. Aristotelian *virtue ethic* evaluates the moral character of persons or groups.

Utilitarian ethic

Utilitarianism is the name applied to an ethical theory formulated by Jeremy Bentham (1784-1832) and restructured in its classical form by John Stuart Mill (1806-1873). This approach places the

moral worth of an action in the action's consequences and emphasizes the good of the total society, not the benefits accruing to a single individual or even a group of individuals.

A classical case in business ethics perfectly illustrates how the utilitarian approach works and why it can lead, sometimes, to highly controversial decisions in business. This case exemplifies the dictum, "The way to hell is paved with good intentions," even though utilitarian ethics underestimate the importance of intention in assessing the moral worth of human actions, basing moral judgment only on their consequences.

THE FORD PINTO CASE

In the mid-1960s, Ford lost market share to Japanese companies making compact, fuel-efficient cars. Lee Iaccoca, president of Ford at that time, determined to regain Ford's share by rapidly developing a new small car called the Pinto. The model was scheduled to be put on the market in 1970.

The Pinto would weigh less than 2,000 pound, cost less than \$2,000 and be brought to market in 2 years instead of the normal 4. Because the Pinto was a rush project, styling considerations dictated engineering design to a greater degree than usual. In particular, the Pinto's styling required that the gas tank be placed behind the rear axle, where it was more vulnerable to being punctured in case of a rear-end collision.

When an early model of the Pinto was crash-tested, it was found that, when struck from the rear at 20 miles per hour or more, the gas tank would sometimes rupture and gas would spray out and into the passenger compartment. In a real accident, stray sparks might explosively ignite the spraying gasoline and possibly burn any trapped occupants.

Ford's engineers suggested that crash fires could be largely prevented by installing a rubber bladder inside the gas tank for only \$11 per car. Subsequent estimations revealed that the real cost of this technical improvement would not have been greater than \$5.85 a car!

Ford managers decided, nonetheless, to go ahead with production of the Pinto for several reasons: First, the design met all the applicable

legal and government standards then in effect. At that time, government regulations required that a gas tank only remain intact in a rear-end collision of less than 20 miles per hour. It is worth to mention that a new standard, more restrictive, was about to be adopted by the federal authorities. To prevent this, Ford spent millions of dollars on lobby activities within the Congress and succeeded beyond its wildest expectations: the standard was not adopted until the 1977 model year (8 years delay). Second, Ford managers felt that the car was comparable in safety to several other cars then being produced by other auto companies. Third, according to an internal cost-benefit study that Ford carried out, the costs of modifying the Pinto would not be balanced by the benefits.

Instead of making the \$11 improvement, installing the \$5.08 bladder, or even giving the consumer the right to choose the additional cost for added safety, Ford continued to delay the federal government for eight years in establishing mandatory rear-impact standards. In the meantime, hundreds of people were burning to death and thousands more were being badly burned and disfigured for life, tragedies many of which could have been prevented for only a slight cost per vehicle. Furthermore, the delay also meant that millions of new unsafe vehicles went on the road, vehicles that will be crashing, leaking fuel and incinerating people well into the 1980s.

On August 10, 1978, a tragic automobile accident occurred on U.S. Highway 33 near Goshen, Indiana. Sisters Judy and Lynn Ulrich (ages 18 and 16, respectively) and their cousin Donna Ulrich (age 18) were struck from the rear in their 1973 Ford Pinto by a van. The gas tank of the Pinto ruptured, the car burst into flames and the three teen-agers burned to death.

Subsequently an Elkhart County grand jury returned a criminal homicide charge against Ford, the first ever against an American corporation. During the following 20-week trial, Judge Harold R. Staffeld advised the jury that Ford should be convicted of reckless homicide if it were shown that the company had engaged in "plain, conscious and unjustifiable disregard of harm that might result (from its actions) and the disregard involved a substantial deviation from acceptable standards of conduct." The key phrase around which the trial hinged, of course, is "acceptable standards." Did Ford knowingly and recklessly choose profit over safety in the design and placement of the Pinto's gas tank? Elkhart County prosecutor Michael A. Cosentino and

Chief Ford attorney James F. Neal battled dramatically over this issue in a rural Indiana courthouse. Meanwhile, American business anxiously awaited the verdict, which could send warning ripples through boardrooms across the nation concerning corporate responsibility and product liability. The lawyers representing Ford Motor Company produced in court these accounting figures, trying to defend the Ford managers' decision to keep the original design.

Benefits

Savings: 180 burn deaths, 180 serious burn injuries, 2,100 vehicles incinerated

Unit Cost: \$200,000 per death, \$67,000 per injury, \$700 per vehicle

Total Benefit: $(180 \times \$200,000) + (180 \times \$67,000) + (2,100 \times \$700)$
= \$49.15 million

Costs

Sales: 11 million cars, 1.5 million light trucks

Unit Cost: \$11 per car, \$11 per truck

Total Cost: 12.5 million \times \$11 = \$137 million

It was not right, the study argued, to spend \$137 million of society's money to provide a benefit society valued at only \$49.15 million.

The most controversial aspect proved to be the way Ford's accountants determined the total cost of a human life as about \$200,000.

Component

1971 Costs

Future Productivity Losses

Direct \$132,000

Indirect \$41,300

Medical Costs

Hospital \$700

Other \$425

Property Damage

\$1,500

Insurance Administration

\$4,700

Legal and Court

\$3,000

Employer Losses

\$1,000

Victim's Pain and Suffering

\$10,000

Funeral

\$900

Assets (Lost Consumption)

\$5,000

Miscellaneous

\$200

TOTAL PER FATALITY

\$200,725

Critical newspaper articles wondered who could explain how the \$10,000 figure for “pain and suffering” had been arrived at. As a matter of fact, it was the federal government, not Ford, that set the figure for a burn death. At that time (1970), the government officially valued a human life at \$200,000, insurance companies valued a serious burn injury at \$67,000 and the average residual value on subcompacts was \$700. Ford simply carried out a cost-benefit analysis based on those currently accepted figures.

On March 13, 1980, the Elkhart County jury found Ford not guilty of criminal homicide in the Ulrich case. Ford attorney Neal summarized several points in his closing argument before the jury. First, Ford could have stayed out of the small car market, which would have been the “easiest way,” since Ford would have made more profit by sticking to bigger cars. Instead, Ford built the Pinto “to take on the imports, to save jobs for Americans and to make a profit for its stockholders.” Second, The Pinto met every fuel-system standard of any federal, state or local government, and was comparable to other 1973 subcompacts. Third, the engineers who designed the car thought it was a good, safe car and bought it for themselves and their families. Fourth, Ford did everything possible quickly to recall the Pinto after NHTSA ordered it to do so. Finally, and more specifically to the case at hand, Highway 33 was a badly designed highway, and the girls were fully stopped when a 4,000-pound van rammed into the rear of their Pinto at least 50 miles per hour. Given the same circumstances, Neal stated, any car would have suffered the same consequences as the Ulrich’s Pinto.¹

The Utilitarian Principle and decision-making process

Utilitarianism sought to provide legislators with a clear and scientific method for evaluating legislative options. An early leader of the utilitarian movement, Jeremy Bentham produced a book for legislators entitled *An Introduction to the Principles of Morals and Legislation*, which laid out the utilitarian proposal to base moral judgments on the principle of utility. “By utility,” wrote Bentham, “is meant that propriety in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness (all this in the

present case comes to the same thing), or (what comes again to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered: if that party be the community in general, then the happiness of the community: if a particular individual, then the happiness of that individual." Bentham's first definition claims that "an action may be said to be conformable to the principle of utility [...] when the tendency it has to augment the happiness of the community is greater than any it has to diminish it."²

The attractiveness of this formula is that it was quantifiable, or so Bentham argues: one can add up all the positive aspects of a decision, contrast them with all the negative aspects, and then make the decision on the grounds of producing the greatest happiness for the greatest number of people. For Bentham, the matter was simple: pain is bad, pleasure is good. If an action produces more pain than pleasure (again, for the greatest number of people), then the only consequence to be considered is the action's tendency to produce pleasure and avoid pain.

As articulated by Mill and Bentham, utilitarianism aims not for the pleasure of the individual but the "greatest good for the greatest number" of people. Refined by its later interpreters, utilitarianism also rejects a simplistic belief in pursuing the most pleasure possible in favour of the view that incorporates qualitative standards and elevates pleasures of the mind over pleasures of the body. The term "happiness" seems to capture this broadened sense best, and Utilitarian philosophers sometimes call their principle the "greatest happiness principle."

Perhaps the classical advocate of utilitarian view, whose work *Utilitarianism* contains the definitive statement of this approach to ethics, is John Stuart Mill. In this work, he sums up the basic principle of utilitarianism as follows:

The creed which accepts as the foundations of morals Utility, or the Greatest Happiness Principle, holds that actions are right in proportion

as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain; by unhappiness, pain and the absence of pleasure.³

Like the ancient Greek philosopher Epicurus, utilitarian philosophers are hedonists, that is, they see pleasure as the intrinsic good. Also like Epicurus, they argue that many factors enter into the estimation of the pleasure-pain equation: the long-term effects of an action, its tendency to promoting additional pleasure rather than producing pain, its certainty or uncertainty, and its intensity, duration, and the difficulty or ease of achieving it. In the second edition of *Introduction to Principles of Morals and Legislation*, Bentham even includes a bit of doggerel that he thought summed up his moral philosophy nicely:

Intense, long, certain, speedy, fruitful, pure
Such marks in *pleasure* and in *pains* endure.
Such pleasures seek, if *private* be the end;
If it be *public*, wide let them *extend*.
Such *pains* avoid, whichever by thy view;
If pains *must* come, let them *extend* to few.⁴

To apply correctly the utilitarian approach, one should avoid several possible misunderstandings of the utilitarian principle. First, the principle does not refer to that action which produces the most utility for the person performing that action; rather, an action is right if it produces the most utility for all persons affected by the action (including the person performing the action). Unlike Epicurus and other hedonists, the utilitarian ethicists do not look towards an individual's pleasure, but seek instead the greatest good for society as a whole. They see themselves as social reformers who have tried, in some cases successfully, to influence legislation that would promote the common good.

Nor does the utilitarian principle say that an action is right so long as its benefits outweigh its costs. Rather, utilitarianism holds that, in the final analysis, only one action is right: that one action

whose net benefits are greatest by comparison to the net benefits of all other possible alternatives.

Finally, the utilitarian principle does not require us to consider only the direct and immediate consequences of our actions. Instead, both the immediate and all the foreseeable future costs and benefits, that each alternative will provide for each individual, must be taken into account as well as any significant indirect effects.

These premises set forth a specific utilitarian approach of decision making, in three steps. First, one must determine what alternative actions or policies are available on that occasion. Thus, the Ford managers were implicitly considering two alternatives: to redesign the Pinto by putting a rubber bladder around the gas tank and leave it as originally designed.

Second, for each alternative action, one should estimate the direct benefits and costs that the action will probably produce for every person affected by the action, in the foreseeable future. Ford's calculations of the costs and benefits that all affected parties would have to bear if the Pinto design was changed and those that all parties would have to bear if it was not modified, are examples of such estimates.

Finally, one must choose the alternative that produces the greatest total utility as the ethically appropriate course of action. The Ford managers decided that the course of action that would impose the lowest costs and the greatest benefits would be to leave the Pinto design unchanged.

Why utilitarian ethic is so attractive

Utilitarian ethic is a very attractive and familiar approach, for several reasons. It matches nicely the common sense views that we tend to advocate when discussing the choice of government policies and public goods. Utilitarianism also seems to fit in rather neatly with the intuitive criteria that people employ when

discussing moral conduct. However, occasionally utilitarianism leads to perplexing conclusions, from the viewpoint of common sense. Traditional utilitarians would deny, for example, that dishonesty or theft is necessarily always wrong. If in a certain situation more good consequences would flow from being dishonest than from any other act, a person could perform in that situation, then, according to traditional utilitarian theory, dishonesty would be morally right in that particular situation.

Utilitarianism is also the basis of the techniques of economic cost-benefit analysis. This type of analysis is used to determine the desirability of investing in a project (such a dam, factory, or public park) by figuring whether its present and future economic benefits outweigh its present and future economic costs. If the monetary benefits of a certain public project exceed the monetary costs, and if the excess is greater than the excess produced by any other feasible project, then the project should be undertaken. In this form of utilitarianism, the concept of utility is restricted to monetarily measurable economic costs and benefits.

Utilitarianism fits nicely with a value that many people prize: efficiency. Efficiency can mean different things to different people, but for many it means operating in such a way that permits one to produce the most one can with the resources at hand. That is, an efficient operation is one that produces a desired output with the lowest resource input. Such efficiency is precisely what utilitarianism advocates, because it holds that one should always adopt the course of action that will produce the greatest benefits at the lowest cost. If we read “desired output” in the place of “benefits” and “resource input” in place of “cost,” then utilitarianism implies that the right course of action is always the most efficient one.

This emphasis on the consequences of human actions, ignoring their motives, also makes utilitarian approach attractive for the common sense. Intentions are invisible and most people use to dissimulate their real motives, which rest always controversial. (Let

us recall the Home Depot or the Merck and river blindness cases.) On the contrary, the results of an action are quite visible and anyone can objectively assess their moral character. Yet, this perspective often leads to uncertain and superficial value judgments. Let us say that a one kid is drowning in a lake or river, not far from the bank, in shallow waters. One drifter, passing by, assumes the kid belongs to a wealthy family and, hoping to get a generous reward, jumps into the water and saves the kid's life. His motives were not at all noble and morally worthy; however, the drifter made everybody happy – the kid is alive, his family relieved, and he got his prize. This was a good action from the utilitarian point of view. Let us say now that a social activist spent a lot of time, money, and energy to prevent people drowning in that dangerous spot, where many children had died in the past. Our man organized marches in the street; he gathered hundreds of signatures on petitions addressed to the city council, hoping to determine the mayor and the local authorities to take some effective measures, but he failed. His intentions were very honourable, of course, but he got no results. From a utilitarian perspective, good intentions and noble motivation are worthless, as long as they do not lead to effective good consequences. "Clearly", say DesJardins and McCall, "this purely consequentialist approach to moral decision making reduces to accepting that the end justifies the means. Many people find this aspect of utilitarianism troubling."⁵

Measurement difficulties with the utilitarian approach

Besides commonsense perplexities, utilitarian ethic is vulnerable to several theoretical criticisms. One major set of problems with utilitarianism centres on the difficulties encountered when trying to measure utility. Comparative measures of the values things have for different people cannot be made; thus, there is no way of knowing whether utility would be maximized by one action rather

than by all the others. If we cannot know which actions will produce the greatest amounts of utility, then we cannot apply the utilitarian principle. Suppose you and I would both enjoy getting a certain job. How can we figure out whether the utility you would get out of having the job is more or less than the utility I would get out of having it? Each of us may be sure that he or she would benefit most from the job, but because we cannot get into each other's skin, this judgment has no objective basis.

Some benefits and costs seem intractable to measurement. How, for example, can one measure the value of health or life? Suppose that installing an expensive exhaust system in a workshop will eliminate a large portion of certain carcinogenic particles that workers might otherwise inhale. Suppose that as a result some of the workers probably will live 5 years longer. How is one to calculate the value of those years of added life, and how is this value to be quantitatively balanced against the costs of installing the exhaust system? The Ford managers, when considering the deaths that the Pinto design would cause, decided that a human life was worth \$200,000 (in 1970 dollars). But doesn't the price they assigned to a life seem arbitrary and doesn't the attempt to price life seem morally inappropriate?

Because many of the benefits and costs of an action cannot be reliably predicted, they also cannot be adequately measured. The beneficial or costly consequences of basic scientific knowledge are notoriously difficult to predict. Yet suppose that one has to decide how much to invest in a research program that will probably uncover some highly theoretical, but not immediately usable, information about the universe. How is the future value of that information to be measured, and how can it be weighed against either the present costs of funding the research or the more certain benefits that would result from putting the funds to an alternative use, such as adding a new wing to the local hospital or building housing for the poor?

It is unclear what is to count as a benefit and what to count as a cost. This lack of clarity is especially problematic with respect to social issues that are getting significantly different evaluations by different cultural and social groups. Suppose a bank must decide whether to extend a loan to the manager of a local pornographic theatre or to the manager of a bar that caters the homosexuals. One group of people may see the increased enjoyment of pornography connoisseurs or the increased enjoyment of gays as benefits accruing to society. Another group, however, may see these as harmful and hence as costs.

Utilitarianism must assume that all goods are tradable for some quantity of any other good because it holds that there is some scale on which all goods can be measured. But there are some non-economic goods – such as life, love, freedom, equality, health, beauty – whose value is such that no quantity of any economic good is equal in value. To sum up: the critics of utilitarianism contend that these measurement problems undercut whatever claims utilitarian theory makes to providing an objective basis for determining normative issues.

The defenders of utilitarianism have an array of replies ready to counter the measurement objections enumerated. Although utilitarianism *ideally* requires accurate quantifiable measurements of all cost and benefits, this requirement can be relaxed when such measurements are impossible. Where quantitative data are unavailable, one may legitimately rely on shared and commonsense judgments of the comparative values things have for most people. We know that, by and large, cancer is a greater injury than a cold, no matter who has the cancer and who has the cold. A steak has a greater value as food than a peanut, no matter whose hunger is involved.

The utilitarian can also point to several commonsense criteria that can use to determine the relative values that should be given to various categories of goods. One commonsense criterion depends on the distinction between *instrumental goods* – things considered

valuable only because they lead to other good things (e.g., a painful visit to the dentist) – and *intrinsic goods* – things desirable independent of any other benefits they may produce. (E.g., health is an intrinsic good, desired for its own sake.) It is clear that intrinsic goods take priority over instrumental goods. Under most circumstances money, which is an instrumental good, must not take priority over life and health, which have intrinsic values. According to this statement, Ford managers did wrong deciding to save money instead of human lives.

A second commonsense criterion that can use to weigh goods is the distinction between *needs and wants*. To say that someone needs something is to say that without it, that person will be harmed in some way. People's basic needs consist of their needs for things without which they will suffer some fundamental harm such as injury, illness, or death. To say that a person wants something is to say that the person desires it, because she thinks that thing will advance her interests in some way. A need, of course, may also be a want. Many wants, however, are not needs, but simply desires for things without which the individual would not suffer any fundamental harm. I may want something simply because I enjoy it, even though the object of my desire is a luxury I could as well give up without any serious damage to my life. Desires of this sort, that are not needs, we call *mere* wants. In general, satisfying a person's basic needs is more valuable than satisfying his or her mere wants.

These commonsense methods of weighing goods are only intended to aid us in situations where quantitative methods fail. In fact, the consequences of many decisions are relatively amenable to quantification – and this is the utilitarian's second major reply to the measurement objections previously outlined. The most flexible method of providing a common quantitative measure for the benefits and costs associated with a decision is in terms of their monetary equivalents. In essence, this implies that the value a thing has for a person can be measured by the price the person is willing

to pay for it. To determine the average values items have for a group of people, one need merely look at the average prices given to those items when everyone may bid for them on open markets. In short, market prices can serve to provide a common quantitative measure of the various benefits and costs associated with a decision.

A standard objection against using monetary values to measure all costs and benefits is that some goods, in particular health and life, cannot price. Steven Kelman argues that placing a dollar value on some goods reduces their perceived value, because they are valued precisely because they cannot be bought and sold in a market. Friendship and love are obvious examples. „Imagine the reaction,” Kelman observes, „if a practitioner of cost-benefit analysis computed the benefits of sex based on the price of prostitute service.” Richard M. Titmuss very perceptively compares the American system of blood collection with that of the British. In the United States, about half of all blood is purchased from donors and sold to people who need transfusions. The British system, by contrast, is purely voluntary. No one is paid for donating blood, and it is provided without charge to anyone in need. As a result, the giving of blood and blood itself have an entirely different significance. If blood has a price, then giving blood merely saves someone else an expense, but blood that cannot be bought and sold becomes a special gift that we make to others.⁶

The utilitarian may argue that not only is it possible to put a price on health and life but that we do so almost daily. Anytime people place a limit on the amount of money they are willing to pay to reduce the risk that some event poses to their lives, they have set an implicit price on their own lives. Suppose that people are willing to pay \$5 for a piece of safety equipment that will reduce the probability of their death in a car crash from .00005 to .00004, but they are unwilling to pay any more than that. Then, in effect, they have implicitly decided that .00001 of a life is worth \$5 – or, in other words, a life is worth \$500,000. Such pricing is inevitable and

necessary so long as we live in an environment in which risks to health and life can be lowered only by giving up (trading off) other things that we may want and on which we set a clear price. According to Buchholz and Rosenthal,

There are at least five ways of determining the value of a human life: (1) calculating the present value of estimated future earnings that are forgone due to premature death; (2) calculating the present value of the losses others experience because of a person's death; (3) examining the value placed on an individual life by presently established social policies and practices; (4) using the "willingness to pay" method where people are asked how much they would be willing to pay to reduce the probability of their death by a certain amount; and (5) looking at the compensation people accept as wage premiums for dangerous jobs or hazardous occupations.⁷

Where market prices are incapable of providing quantitative data for comparing the costs and benefits of various decisions, other sorts of quantitative measures are available. Should people disagree, for example, as they often do, over the harmful or beneficial aspects of various sexual activities, then sociological surveys or political votes can be solutions to measure the intensity and extensiveness of people's attitudes. Economic experts can also provide informed judgments of the relative quantitative values of various costs and benefits. Thus, the utilitarian will grant that the problems of measurement encountered by utilitarianism are serious enough. However, they are at least partially soluble by the various methods enumerated.

Utilitarian difficulties with human rights and social justice

There are, however, other criticisms of utilitarian ethic. The major difficulty with utilitarianism, according to some critics, is that it is unable to deal with two kinds of moral issues: those relating to rights and those relating to justice. That is, the utilitarian principle

implies that certain actions are morally right, when in fact they are unjust or violate people's rights.

Suppose that your uncle has an incurable and painful disease, so that he is quite unhappy but does not choose to die. Although he stays in hospital and will die within a year, he continues to run his chemical plant. Because of his own misery, he deliberately makes life miserable for his workers and has insisted on not installing safety devices in his chemical plant, although he knows that as a result one life will certainly be lost over the next year. You, his only living relative, know that on your uncle's death you will inherit his business and not only will you be wealthy and immensely happy, but you also intend to prevent any future loss of life by installing the needed safety devices. You are cold-blooded and correctly judge that you could secretly murder your uncle without being caught and without your happiness being in any way affected by it afterward. If it is possible for you to murder your uncle without in any way diminishing anyone else's happiness, then, according to utilitarianism, you have a moral obligation to do so. By murdering your uncle, you are trading his life for the life of the workers, and you are gaining your happiness while doing away with his unhappiness and pain – the gain is obviously on the side of utility. However, the critics of utilitarianism claim, it seems quite clear that the murder of your uncle would be a gross violation of his right to life. Utilitarianism has led us to approve an act of murder that is an obvious violation of an individual's most important right. (It would be only fair to utilitarian ethics to submit that no utilitarian would ever go as far to justify murder as a way to obtain utility. Critics of utilitarianism use to invent weird hypothetical stories, pushing things to the limits, rarely, if ever, met in real life. However, it is no less true that these weird stories force utilitarian thinking to be consistent, showing that, rigorously applied, the utilitarian principle leads to reprehensible conclusions.)

Nor justice does better in a utilitarian approach, critics say. Suppose that subsistence wages force a small group of migrant

workers to continue doing the most undesirable jobs in an economy, but produce immense amounts of satisfaction for the vast majority of society's members, because they enjoy cheap vegetables and savings that allow them to indulge other wants. Suppose also that the amount of satisfaction thereby produced, when balanced against the unhappiness and pain imposed on the small group of farm workers, results in a greater net utility than would exist if everyone had to share the burdens of farm work. Then, according to the utilitarian criterion, it would be morally right to continue this system of subsistence wages for farm workers. However, to the critics of utilitarianism, a social system that imposes such unequal sharing of burdens, is clearly immoral and offends against justice. The great benefits the system may have for the majority does not justify the extreme burdens that it imposes on a small group.

The shortcoming this counterexample reveals is that utilitarianism allows benefits and burdens to be distributed among the members of society in any way whatsoever, so long as the total amount of benefits is maximized. In fact, some ways of distributing benefits and burdens are unjust regardless of how great the store of benefits such distributions produce. Utilitarianism looks only at how much utility a society produces and fails to take into account how that utility distributes among the members of society.

To see more clearly how utilitarianism ignores considerations of justice and human rights, consider how Ford's managers dealt with the Pinto's design. Had they decided to change the Pinto's design and add \$11 to the cost of each Pinto, they would, in effect, have forced all the buyers of the Pinto to share in paying the \$137 million that the design change would cost. Each buyer would pay an equal share of the total costs necessitated by this aspect of the Pinto design. However, by not changing the Pinto's design, the Ford managers were in effect forcing the 180 people who would die to absorb all the costs of the Pinto design. So we should ask: Is it more just to have 180 buyers bear all the costs of the Pinto design

by themselves, or is it more just to distribute the costs equally among all buyers? Which is the fairest way of distributing these costs?

Consider, next, that when Ford's managers decided to make no change to the Pinto's design, they were not only making the Pinto cheaper, they were also building a car with a certain amount of risk (to life). Those who drove the Pinto would be driving a car that posed a slightly greater risk to life than they might have reasonably assumed it posed. It is possible that drivers of the Pinto would have gladly accepted this slightly added risk to life in exchange for the lower price of the car. However, they had no choice in the matter, because they did not know the car carried this added risk. So that we should ask, "Do people have the right to know what they are buying when they choose to purchase a product? Do people have a right to choose whether to have greater risk added to their lives? Did the makers of the Pinto violate this basic right of customers to freely choose for themselves whether to accept a riskier car in return for a lower price?"

Rule utilitarianism

To deal with this sort of counterexamples, utilitarian ethicists have proposed an important and influential alternative version of utilitarian ethic – rule-utilitarianism. "In contrast with the position of act utilitarians, rule utilitarians hold that rules have a central position in morality that cannot be compromised by the demands of particular situations."⁸ The basic strategy of rule utilitarianism is to limit utilitarian analysis to the evaluations of moral rules. When trying to determine whether a particular action is ethical, one is never supposed to ask whether that particular action will produce the greatest amount of utility. Instead, one is supposed to ask whether the action complies with the correct moral rules that everyone should follow. If the action is demanded by such rules,

then one should carry out the action. But what are the “correct” moral rules? Only the second question is supposed to be answered by reference to maximizing utility. The correct moral rules are those that would produce the greatest amount of utility if everyone were to follow them.

Rule utilitarian theory has two parts, which can summarize in the following two principles: First, an action is right from an ethical point of view if and only if the action were demanded by those moral rules that are correct. Second, a moral rule is correct if and only if the sum total of utilities produced if everyone were to follow the rule is greater than the sum total of utilities produced if everyone were to follow some alternative rule. The fact that a certain action would maximize utility on one particular occasion does not show that it is right from an ethical point of view.

Applying this two-steps strategy, rule utilitarianism hopes to escape the counterexamples imagined by its critics. The counterexample involving the rich uncle and the murderous heir is a situation that deals with killing a sick person. In such situations, it is clear that a moral rule that forbids killing without the due process of law will produce, over the long run, greater utility for society than other kinds of rules. Therefore, such a rule is the correct one to apply to the case. It would be wrong for the heir to kill his uncle because doing so would violate a correct moral rule, and the fact that, on this particular occasion, murder would maximize utility is irrelevant. The case dealing with subsistence wages should approach similarly. It is clear that a rule that forbade unnecessary subsistence wages in societies, over the long run, would result in more utility than a rule that allowed them. Such a rule would be the correct rule to invoke when asking whether practicing *wage slavery* is morally acceptable and the practice would then be rejected as ethically wrong, even if it would maximize utility on a particular occasion.

Unfortunately, rule utilitarianism cannot escape a deadly alternative: If they claim that one should always follow a morally

correct rule, even in those situations in which breaking the rule maximized utility, rule utilitarians give up the utilitarian principle and adopt the viewpoint of a different theory that we shall analyze in the next section. If they stick to the utilitarian principle, rule utilitarians must submit that rules that allow (beneficial) exceptions will produce more utility than rules that do not allow any exceptions. However, once a rule allows these exceptions, it will allow the same injustices and violations of rights that traditional utilitarianism allows. In other words, rule-utilitarianism is traditional (case-by-case) utilitarianism in disguise.

Shall we conclude that utilitarian approach does not work? Not at all – it works, but the method should apply carefully and thoroughly. De George teaches us how we should carry out the utilitarian analysis towards the most plausible conclusions.

UTILITARIANISM AND BRIBERY

An airplane manufacturer has spent a great deal of money developing a new airplane. The company badly needs cash because it is financially overextended. If it does not get some large orders soon, it will have to close down part of its operation. Doing that will put several thousand workers out of job. The result will be disastrous not only for the workers, but also for the town in which they live. The president of the company has been trying to interest the government of a foreign country in a large purchase. He learns that one of the key governmental ministers in charge of making the final decision is heavily in debt because of gambling. He quietly contacts that minister and offers him \$1 million in cash if he awards the contract for five planes to his firm. The money is paid and the contract is awarded. The president argues that his action is justifiable because the business, the workers' jobs, and the town were all saved; the minister was able to pay his debts; and the foreign country received the planes it needed. The good produced, he argues, is greater than any harm done by the payment to the minister. Is he correct?

The argument appears to be a utilitarian one in that it seeks to evaluate the results of the action, weighs the good against the bad, and argues that the good outweighs the bad. The alternative would have been not to give the bribe. But if it had not been given, then the contract might not have been awarded. If it had not been awarded, then all of the bad consequences indicated would have taken place. No good would have been achieved, and the result would clearly have been worse.

The argument may sound plausible. Nevertheless, we believe that bribery is immoral. Is it that Utilitarianism does not work in this case? The reply is that it works, but it has not been properly used here. The foregoing account is obviously a one-sided version of the situation. It describes the thinking of the president of the company, his point of view, and his concerns, which, here, are not the same as the moral point of view. The moral point of view is objective and considers all the consequences of an action for all the people affected by it. We must therefore take into consideration much more than what we have so far. We must broaden the picture, look more closely on the people already mentioned, and then open our vision to those whom we have so far ignored.

Our first step is to state precisely what we wish to evaluate. The president used a truncated *act utilitarian* approach. Try to state the rule he is implicitly advocating. Is it that all firms should be allowed to bribe government officials when they have the opportunity to do so? The president puts great emphasis on the negative consequences of not getting the contract; therefore, perhaps the rule is that only firms in financial difficulty should be allowed to bribe government officials. If the company is in financial difficulty as the result of poor management, perhaps the rule is that only poorly managed companies should be permitted to bribe government officials. None of these rules sounds plausible. The dominant consideration in evaluating all of them is the harm done to the *system* of doing business, to the other competing firms and their employees, and to the integrity of government officials. If the action is clearly described as a rule for all firms similarly placed, we immediately see that we do not need a detailed analysis.

Even if we accept the president's approach, however, a full examination of the consequences of his action will show the action to be morally unjustifiable. First, what are the consequences of the bribe for the public official? The only consequence we have considered so far is that he gets the money he needs and gives a contract to the company

in question. What are the chances that the bribe will be discovered, and what will the consequences be if it is discovered? Bribery is illegal in most countries. If the public official's action is discovered, he would in all likelihood be charged with a felony, lose his job, and, if convicted, be heavily fined / or go to jail. Will his life be better? If he is not found out, he may be blackmailed. He may also be tempted to live beyond his means and end up in a similar situation again. He will have to explain where he got the money to his wife, and perhaps to others. He will not report it on his income tax and will thus be liable for not reporting income. We can continue to consider what might happen to him and try to evaluate how likely these things are to occur, how seriously they will affect him, and so on.

The good done to the workers, plant, and town have to be given their due weight. But the story does not mention competing firms. What is their situation? Will their workers be out of jobs? Will their towns be depressed? Consider the president of the company. How will he manage to pay \$1 million? Where will it come from? How will he pay it without its being recorded and reported to the Internal Revenue Service and to the company auditors? For this project to succeed, it is clear that the president will have to break more laws than the law against bribery. All of his actions will have their effects. If his actions are found out, he will be held liable, may lose his job, and may be imprisoned.

Consider next the effects on the general public. The government official is spending their money. If he is not buying the best equipment at the best price he can get, then he is misusing public funds and hence harming the taxpayers. If the airplanes he contracted for were the ones he would purchase anyway, then what was the point of the bribe? But even if he would have placed the order with that firm without a bribe, the \$1 million he received had to come from somewhere. Either it was added to the cost of the planes he purchased and thereby came from taxpayers, or it came from the company's profits and thereby came from the shareholders. In either case, the money was taken from those who had legitimate claim to it, and they will be negatively affected to that extent.

The bribe also had an effect on the general system of bidding, on the practice of competition, and on the integrity of those engaged in these practices. Once bribery is an accepted way of doing business, people will no longer get the best value for their money. Does the good done to the person who receives the bribe and to the person who gives it

outweigh the possible harm done to them if they are caught? What about the certain harm done to those who must pay more, or who receive less profit, and to the system as a whole?

If we doubt whether the practice of bribery does more harm than good, we need only consider why it is not carried on openly. Why is the giving of a bribe not considered a legitimate part of doing business? The obvious reason is that a few people benefit from the practice but at the expense of a great many other people, including society and business in general.

The argument is a utilitarian one. We did not attempt any exact quantitative evaluation of good and bad results. But in our reasoning we did consider consequences for all those involved, and we avoided arbitrarily cutting off the consequences to be considered.

The president's account did not consider all those affected by the action. He ended his investigation of the consequences at the point most suitable to him. Obviously, the use of the utilitarian calculation does not provide an automatic guarantee of morality. To produce a morally justifiable result, it must be used by someone who truly wishes to find out what is right and who impartially takes into account the immediate and future consequences for all concerned. [. .]

The mid-1970s witnessed major international scandals concerning bribes, kickbacks, and illegal campaign contributions, both in the US and abroad. Lockheed Corp, among others, was involved in giving \$12.5 million in bribes and commissions in connection with the sale of \$430 million worth of TriStar planes to All Nippon Airways. Carl Kottchian, who later defended his payments in an article in the *Saturday Review*, was forced to resign from his position after the news of the payoffs broke. Defenders of the payments claimed that the practice was not only common in Japan but was also expected. Nonetheless, the news rocked Japan even more than it did in the US. The prime minister of Japan, Kakuei Tanaka, and four others were forced to resign from government and were brought to trial. Legislation attempting to control bribery was proposed both in the US and Japan, and some of it passed. The results of bribery were far-reaching. But the Lockheed case was not a simple one. Lockheed did not offered bribe; rather, the Japanese negotiator demanded it. Are those who accede to bribery as guilty as those who demand bribes? Do the same moral obligations exist in dealing with a corrupt government as in dealing with an honest one? If the people of a country tolerate bribery among their officials, do they in

effect consent to the system? If the paying of such commissions is the sine qua non of doing business with the government, is it morally justifiable? These are complex questions, the answers to which are not deducible from the general claim that bribery is immoral.

Utilitarianism, far from being a self-serving approach to moral issues, demands careful, objective, impartial evaluation of consequences. It is a widely used – but often misused – approach to moral evaluation. As a powerful tool of moral reasoning, it is a technique well worth mastering.¹⁰

Rights and Kantian duty ethics

The concept of a *right* plays a crucial role in many of the moral arguments and moral claims invoked in business discussions. Employees argue that they have a right to equal pay for equal work; managers assert that unions violate their right to manage; investors complain that taxation violates their property rights; consumers claim they have a right to know.

In 1948, the United Nations adopted the “Universal Declaration of Human Rights.” The document claimed that all human beings are entitled to: “the right to own property [. . .]; the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment; the right to just and favourable remuneration, ensuring for [the worker] and his family an existence worthy of human dignity; the right to form and to join unions; the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”

The concept of a right and the correlative notion of duty lie at the heart of much of our moral discourse.

The concept of a right

In general, a right is an individual's entitlement to something: a) to act in a certain way; b) to have others act in a certain way toward him or her.

We should make an important distinction between legal and moral rights. Speaking of *legal rights*, the entitlement to something derive from a legal system that permits or empowers the person to act in a specified way or that requires others to act in certain ways toward that person; legal rights are limited to the particular jurisdiction within which the legal system is in force.

Moral rights are somehow different. Entitlements derive from a system of moral standards independently of any particular legal system; such moral or human rights are based on moral norms and principles which specify that all human beings are permitted or empowered to do something or are entitled to have something done for them. Unlike legal rights, moral rights are usually thought of as being universal, not limited to a particular jurisdiction.

We use the term *right* to cover a variety of situations in which individuals are enabled to choose freely whether to pursue certain interests or activities:

- *The absence of prohibitions against pursuing some interest or activity.* I have a right to do whatever the law or morality does not positively forbid me to do. In this weak sense of a right, the enabling and protective aspects are minimal.
- A person is *authorized* or *empowered* to do something either to secure the interests of others or to secure one's interests. An army or police officer acquires legal rights of command over subordinates that enable the officer to pursue the security of others, whereas a property owner acquires legal property rights that enable doing as the owner wishes with the property.
- The existence of *prohibitions* or requirements on others that enable the individual to pursue certain interests or activities. Our Constitution gives citizens the right to free speech because

it contains a prohibition against government limits on speech. Our legal system also gives citizens the right to an education because the law contains a requirement that the Romanian State must provide free public education for all its citizens.

The most important moral rights are rights that impose prohibitions or requirements on others and that thereby enable individuals to choose freely whether to pursue certain interests or activities.

Moral rights

These kinds of moral rights have three important features that define these enabling and protective functions.

First, *moral rights are tightly correlated with duties*. To have a moral right necessarily implies that others have certain duties toward the bearer of that right. My moral right to worship as I choose can be defined in terms of the moral duties other people have not to interfere in my chosen form of worship. The moral right to a suitable standard of living can be defined in terms of the duty that governments (or some other agents of society) have to ensure a suitable standard of living for their citizens. Thus, moral rights impose correlative duties on others – either duties of non interference or duties of positive performance.

Second, *moral rights provide individuals with autonomy and equality in the free pursuit of their interests*. A right identifies activities or interests that people must be left free to pursue or not pursue as they choose and whose pursuit must not be subordinated to the interests of others (except for special and exceptionally weighty reasons). The gains of others do not generally justify interference with a person's pursuit of an interest or an activity when that pursuit is protected by a moral right.

Third, *moral rights provide a basis for justifying one's actions and for invoking the protection or aid of others*. If I have a moral

right to do something, then I have a moral justification for doing it. Moreover, if I have a right to do something, then others have no justification for interfering with me. On the contrary, others are justified in restraining any persons who try to prevent me from exercising my right, or others may have a duty to aid me in exercising my right.

Moral rights and social utility

Because moral rights have these three features, they provide basis for making moral judgments that differ substantially from utilitarian standards.

Moral rights express the requirements of morality from the point of view of the *individual*, whereas utilitarianism expresses the requirements of morality from the point of view of *society as a whole*. Rights limit the validity of appeals to social benefits and to numbers. That is, if a person has a right to do something, then it is wrong for anyone to interfere, although a large number of people might gain much more utility from such interference.

For example, if I have a right to life then it is morally wrong for someone to kill me even if many others would gain much more from my death than I will ever gain from living. If the members of a minority group have a right to free speech, then the majority must leave the minority free to speak even if the majority is much more numerous and intensely opposed to what the minority will say.

Although rights generally override utilitarian standards, they are not immune from all utilitarian consideration: If the utilitarian benefits or losses imposed on society become great enough, they might be sufficient to breach the protective walls the rights set up around a person's freedom to pursue individual interests. For instance, in times of war or major public emergencies it is generally acknowledged that civil rights may legitimately be restricted for the sake of "the public welfare". The property rights of factory owners

may be restricted to prevent pollution that is imposing major damages on the health of others.

The more important the interest protected by a right, the larger the utilitarian trade-offs must be: rights erect higher walls around more important interests, and so the level of social benefits and costs needed to breach the walls must be greater.

Negative and positive rights

Negative rights can be defined wholly in terms of duties others have to not interfere in certain activities of the person who holds a given right. If I have a right to privacy, this means that every other person, including my employer, has the duty not to intervene in my private affairs. If I have a right to use, sell, or destroy my personal business assets, this means that every other person has the duty not to prevent me from using, selling, or destroying my business property as I choose. Negative rights were often employed in the seventeenth and eighteenth centuries by writers of manifestos (such as the "Declaration of Independence" and the "Bill of Rights"), who were anxious to protect individuals against the encroachments of monarchical governments.

Positive rights imply that some other agents have the positive duty of providing the holders of the right with whatever they need to freely pursue their interests. If I have a right to an adequate standard of living, this does not mean merely that others must not interfere; it also means that if I am unable to provide myself with an adequate income, then I must be provided with such an income (perhaps by the government). The right to work, the right to an education, the right to adequate health care, and the right to social security are all rights that go beyond non-interference to impose a positive duty of providing people with something when they are unable to provide it for themselves. Positive rights became important in the twentieth century, when society increasingly took

it on itself to provide its members with the necessities of life that they were unable to provide for themselves.

The United Nations declaration bears the influence of this trend when it provides for the rights “to food, clothing, housing, and medical care.”

The change in the meaning of the phrase “the right to life” is another indication of the rising importance of positive rights. The eighteenth century interpreted the “right to life” as the negative right to not be killed. The twentieth century has reinterpreted the phrase to refer to the positive right to be provided with the minimum necessities of life.

Much of the debate over moral rights has concentrated on whether negative or positive rights should be given priority. So-called “conservative” writers have claimed that government efforts should be limited to enforcing negative rights and not expended on providing positive rights. So-called “liberal” authors, in contrast, hold that positive rights have as strong a claim to being honoured as negative rights and that, consequently, government has a duty to provide for both.

This is the crux of the debate over whether government efforts should be restricted to protecting property and securing law and order (i.e., protecting people’s negative rights) or whether government should also provide the needy with jobs, job training, housing, medical care, and other welfare benefits (i.e., provide for people’s positive rights).

Contractual rights and duties

Contractual (*special*) rights and duties are the limited rights and correlative duties that arise when one person enters an agreement with another person. Contractual rights and duties have several distinguishing features:

First, special rights attach to specific individuals and the correlative duties are imposed only on other specific individuals. If I agree to do something for you, everyone else does not thereby acquire new rights over me, nor do I acquire any new duties toward them. Second, contractual rights arise out of a specific transaction between particular individuals. Unless I actually make a promise or enter some other, similar arrangement with you, you do not acquire any contractual rights over me. Third, contractual rights and duties depend on a publicly accepted system of rules that define the transactions that give rise to those rights and duties. Contracts create special rights and duties between people only if these people recognize and accept a system of conventions that specifies that, by doing certain things (such as signing a paper), a person undertakes an obligation to do what the person agrees to do.

Without the institution of contract and the rights and duties it can create, modern business societies could not operate. Virtually every business transaction at some point requires one of the parties to rely on the word of the other party to the effect that the other party will pay later, will deliver certain services later, or will transfer goods of a certain quality and quantity.

Without the social institution of contract, individuals in such situations would be unwilling to rely on the word of the other party, and the transactions would never take place. The institution of contracts provides a way of ensuring that individuals keep their word, and this in turn makes it possible for business society to operate. Employers acquire contractual rights to the services of their employees in virtue of the work contract that employees enter, and sellers acquire contractual rights to the future cash that credit buyers agree to give them.

Contractual rights and duties also provide a basis for the special duties or obligations that people acquire when they accept a position or role within a legitimate social institution or an organization. Married parents have a special duty to care for the upbringing of their children. Doctors have a special duty to care for

the health of their patients. Managers have a special duty to care for the organization they administer. In each of these cases, there is a publicly accepted institution (such as a familial, medical, or corporate institution) that defines a certain position or role (such as parent, doctor, or manager) on which the welfare of certain vulnerable persons (such as the parents' children, the doctor's patients, the manager's corporate constituencies) depends.

The system of rules that underlies contractual rights and duties has been traditionally interpreted as including several moral constraints: Both of the parties to a contract must have full knowledge of the nature of the agreement they are entering. Neither party to a contract must intentionally misrepresent the facts of the contractual situation to the other party. Neither party to the contract must be forced to enter the contract under duress or coercion. The contract must not bind the parties to an immoral act.

Kantian moral philosophy

The modern philosophical investigation of human rights began with the writings of Thomas Hobbes, John Locke, Adam Smith and Jean-Jacques Rousseau. Each one in his own particular way, these philosophers were concerned especially with the legal rights and they based their ideas on self-interest, trying to demonstrate that a rational, but selfish individual should vote in favour of social order and against anarchy, violence and insecurity. That every human being is entitled to claim certain universal *moral* rights was not clearly demonstrated in their works. Ethics of rights found its best philosophical support in Kant's "duty ethics."

The theory that divorces morality from self-interest most strictly is Immanuel Kant's (1724-1804). Kant wrote that it was not happiness but worthiness to be happy that mattered in morality, and he denied that one could be motivated to do a thing if one expected

gratification for doing it, or if one did it because that is where one took one's happiness to lie.

As a member of the philosophy faculty at the University of Königsberg, Kant was a teacher of logic, and in his moral philosophy, he wanted to bring the same standards of clarity to ethical analysis as one finds in logical analysis. Another similarity to logical thinking that Kant seeks in ethics is the universality of its judgments. The canons of logic are the same no matter where and when they are invoked, and they should apply equally to all arguments. The same standard should apply to the fundamental principles of ethics: they should be equally valid to all rational persons. If this were not the case, Kant argues, there would be no way rational persons could converse about ethical matters, and the hope of achieving any kind of agreement in ethics would disappear. The two standards Kant proposes are universality and necessity. Universality is the principle just discussed, that ethical standards should apply to all equally. Necessity is a logical term that implies the inner consistency of a principle. Without universality and necessity, ethics will never fully ground on rational principles.

Kant's contribution to the discussion of ethics is in providing a way of understanding that the moral obligation arises when we articulate standards of morality for every rational being. The search for universality of judgments led Kant to the principle he called the "categorical imperative." The phrase itself may seem somewhat unusual, but the concepts it embodies are not. To say that a moral principle is "categorical" is to claim that it is without exceptions and not iffy or provisional. To describe it as an "imperative" means that it is a command that we, as rational beings, not only give to ourselves, but impose on all rational persons. Here is the most widely cited form of the categorical imperative: act on that principle that you can will to be a universal law. Because this principle is a principle of reason, it is our duty as rational beings to obey. Moral views such as Kant's that stress duty and obligation are called *deontological*. Contrary to utilitarian consequentialism,

which seeks the moral worth of human actions in their good or bad effects, deontological approach associates moral worth with the intention or the motives of a human action. The drifter who saved the drowning kid's life for the sake of a substantial reward from his parents did something with excellent results. However, according to Kant, his deed is not morally worthy, since the drifter's motivation was selfish and cynical. The efforts of the social activist deserve moral praise, even though they did not get results, because their motivation was not selfish, but altruistic and generous.

Therefore, intention is essential in assessing the moral worth of human deeds. However, people have a large variety of intentions, most of them empirical, accidental and debatable. It would be a serious mistake to reduce Kantian moral philosophy to the trivial saying, "Intention does count." I stole money from my company; I did not do it for me – I did it to help my friend to pay his daughter's surgery, to fund a progressive civic organization or to sponsor a poor artist. Perhaps my intention was good in itself, but it cannot justify the morality of my deed. Actually, according to Kantian ethics, there is only one morally worthy motive: one's wish to do his or her duty, to do what is right, no matter if doing it is pleasant or uncomfortable; or if doing the right thing pleases one's self-interest or not.

A key point in Kantian ethic is the way Kant attempts to answer this fundamental question: what is the right thing to do? How can one know that he or she is supposed to act in certain ways and to abstain from doing certain things? Kant does not give us a long or short list of ethical duties, opposed to a parallel list of prohibitions – similar to the Ten Commandments in the Old Testament: "You should do this" and "You shouldn't do that." Kant seeks a formal super norm to use as a purely rational instrument for testing the ethical validity of different rules of action. He calls this abstract, formal pattern of ethical validity "categorical imperative." This famous Kantian principle is not telling us what to do or not do; it helps us to decide through

rational judgment whether a certain rule of action – such as “Never lie” or “Keep your promises” – is ethically valid or not. Accordingly, if one rule of action passes the test of validity, everyone should keep it, but if the rule fails the test, it cannot justify the morality of one’s action.

Moral Reasoning

Kant’s view differs from other approaches to ethics in three important ways. First, Kant denies the view that we have a special faculty for making moral decisions, whether it be called moral intuition, a moral sense, or conscience. He argues that we use the same mental faculty for making ethical judgments that we use when we obtain knowledge of the world. This faculty, reason, functions differently when making moral judgments, but it is nevertheless the same faculty.

The emphasis on reason leads to a second difference: Kant’s search for a logical basis for ethics tried to bring the same standards to ethical principles as apply to logical principles. Just as logical principles apply to all arguments, and are unaffected by who and where these arguments are constructed, so ethical principles apply to all people at all times (the characteristic of universality). Another logical criterion is consistency. If I expect everyone to follow a moral principle but fail to follow it myself, then I am being inconsistent. One might advocate the ethical principle that everyone should always tell the truth, but for one-self tell the truth only when it is to one’s benefit. This would be an example of a failure of consistency. Kant argues that we can apply such tests to ethical judgments at the level of fundamental ethical principles, which are formal (which means they have no specific content). A logical formula can have different applications because its principles are justified by formal analysis, not by their content.

Similarly, Kant presents formal principles for ethics that one can use to test the morality of a variety of contemplated actions.

A third difference is Kant's rejection of consequences as significant in assessing the moral worth of an action. The philosophers we have encountered thus far – Hobbes, Bentham, Mill – despite their differences, all emphasize that the consequences of actions are significant for judging an action's moral worth. Kant's criticism of consequentialism in ethics is that it cannot provide the universality and consistency that ought to characterize moral judgments. Additionally, it cannot capture the importance of intentions as essential to understanding the morality of an action. We would want to say, for example, as our legal system does, that there is a major difference between premeditated murder and accidental homicide. Consequentialist ethics cannot easily capture this distinction.

We have already mentioned Kant's defence of the principle of ethics known as the categorical imperative. Although there is but a single categorical imperative, Kant argues, it can get three formulations. They are convergent in their substance but each formula stresses one particular aspect of morality.

The Principle of Universality

An imperative is a command, but there are several types of commands. A categorical imperative is a command that applies in all circumstances, without exception. In contrast, a hypothetical imperative is a conditional command, an "if ... then ..." directive. If I want to seek the greatest good for the greatest number, then I will have to do those things that will maximize utility. Any view based on consequences can only derive from hypothetical imperatives. The truly moral imperative involves being able to will that principle of one's action into a universal law. In Kant's words, the first formulation of the categorical imperative is the following:

“Act only on that maxim whereby thou canst at the same time will that it should become a universal law.”¹¹ To do this, Kant argues we must first isolate the principle on which we are acting (he called this the “maxim”). Then we apply the consistency test to see whether we could make this maxim, or principle, one that everyone could follow. There are two ways the maxim could fail this test. One is when making the principle universal undercuts its own possibility. Borrowing money (from a bank or a friend) on the promise to repay the loan is possible when keeping promises make a universal law. But suppose the maxim were something like this: “I will promise to repay only when convenient for me.” This could not be a universal law because, were everyone to follow this maxim, borrowing and lending would soon disappear. An individual promising to repay a loan, but having no intention to keep the promise, can act in this way only because most people do keep promises. This is an example of how a principle fails the test of consistency.

A maxim can also fail the test of universal application when a person is inconsistent in applying it. There are some maxims that can universalize without the kind of contradiction just mentioned. Kant’s example is that of helping people in need. Suppose the maxim were something like “People should only have what they themselves earn,” a maxim that could be described as a principle of self-sufficiency. There is no self-contradiction in making this a universal law, but there would be a change in the attitude of the person following the maxim were that person’s situation to change. For example, when individuals find themselves in need, they would modify the maxim of self-sufficiency. In its modified version, it might be something like the following: “People should only have what they themselves earn, except when circumstances beyond their control make it necessary to receive help from others.” But this is a very different maxim from the original one, and this change shows that the first maxim could not be made a universal law without exceptions because the individual using this maxim

would change it to reflect changing circumstances. A command involving such a maxim fails to be categorical and is an example of not meeting the test of universality.

It is not difficult to think of business to illustrate the principle of universality. If in advertising a product I decide to lie about it, then my principle or maxim would be something like the following: "Lie about your product in order to increase sales." Could one rational person accept this principle as a universal law? Of course not, because advertising needs credibility in order to be useful as a sales medium and advertisers themselves are consumers of others' products and would not wish to grant others the right to lie to them. False advertising fails as a universal activity because applying the maxim would not only destroy the credibility of advertising, but also the purveyor of false advertising would not want to be the recipient of false advertising.

In order to capture these two senses of what it means to make one's principle of action universal, the contemporary business ethics writer Manuel Velasquez suggests the terminology 'universalizability' and 'reversibility'. Although this is not Kantian terminology, it does capture Kant's meaning. Here is how Velasquez puts it: "*Universalizability*: The person's reasons for acting must be reasons that everyone could act on at least in principle. *Reversibility*: The person's reasons for acting must be reasons that he or she would be willing to have all others use, even as a basis of how they treat him or her."¹²

Basic, then, to Kant's analysis of moral rights are the notions of consistency and fairness. Consistency is another way of addressing the criterion of making our principle universal, and fairness means, in some important sense that we are willing to play by the same rules we apply to everybody else.

The Principle of Respect

These Kantian principles easily lead to a second formulation of the categorical imperative: "act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only."¹³ As rational beings, we all demand to be treated with respect. To give respect to someone, Kant says, is to acknowledge worth without price; we cannot put a dollar value on human worth. If I demand respect from others, the categorical imperative directs me to extend this same demand to others, to make the rule I apply to myself a universal law. Therefore, it is rational to demand that we treat humanity, whether it be my humanness or that of others, as ends and never as a means only. Kant's point here is frequently misunderstood, since we all treat other people as a means. A teacher serves as a means of providing education, a clerk in a store is a means of delivering service, a worker in a factory is a means of production. There is nothing wrong with this as long as we do not treat other persons as means *only* – that is, as long as our treatment of them does not deny their basic humanity and inherent dignity. This is, after all, how we expect others to relate to us, and we thus are obligated to treat them in the same way.

The Principle of Autonomy

Also basic to Kant's view is the principle of autonomy, literally self-rule, and this leads to the third formulation of the categorical imperative: "the idea of the will of every rational being as a universally legislative will."¹⁴ Kant argues that it is essential to a moral action that it be willingly done; no one can force you to be moral. Again, this point corresponds with our ordinary, commonsense view of morality. Freedom of choice lies behind the common saying that we cannot legislate morality. We can certainly

legislate that people act in accordance with moral rules, but such actions, if done only from a fear of punishment, or only because the law says we have to, is not morally significant. To act morally means that we freely choose the action, which it done because we will it. If someone forces us to act in a certain way, our action occurs for reasons other than moral ones, and Kant calls this acting under heteronomy rather than autonomously.

At first glance, it might seem Kant is giving us contradictory insights with his emphasis, on the one hand, on universal laws and absolutes and, on the other hand, his claim that the only moral act is a free act. Remember, however, that Kant is not claiming that to know the right thing to do is to do the right thing. We might be fully aware of the moral course of action but fail to act on that knowledge because of fear of failure, conflict with our own self-interests, or simply lack of will to carry out our intentions. None of these considerations argues against Kant's point in the least; if knowing the right thing to do led us inevitably to do the right thing, the moral worth of the action would disappear. Our actions have moral worth only when done for moral reasons. Individual autonomy is basic. Take that away, Kant thought, and you remove morality as well. There are two senses, then, in which autonomy is important. The first is that we freely choose to do the morally right thing. The second is that free choice is a basic demand of reason, and no action – or system – can consider be moral unless it honours the principle of autonomy or free choice.

To sum up: there are three forms of the categorical imperative, each of which captures an important aspect of moral action. Kant insists repeatedly that even though the categorical imperative can get different expressions, there is but one categorical imperative. What he means is that one statement leads logically into the others. The principle of universality leads us to apply our maxims to ourselves as well as others. This is also true of respect, which we demand from others and which we owe to others. Finally, moral actions are those freely chosen; if a moral action is one that I will to

be a universal law, then an action forced on me by the law of someone else is not my moral act. We could say that the first formulation of the categorical imperative captures the importance of consistency, the second that of fairness and respect, and the third that of free choice. These are all three important aspects of the notion of rights.

Problems with Kantian duty ethics

Kant's moral philosophy is providing us with probably the strongest arguments supporting the idea that human beings do have moral rights. The categorical imperative, however, cannot tell by itself what particular moral rights human beings have. Insofar as free speech is critically important, humans must leave each other equally free to speak as they choose: everyone has a moral right to freedom of speech. However, insofar as free speech conflicts with another human interest of equal or greater importance (such as our interest in not being labelled or defamed), the right to freedom of speech must be limited. There is substantial disagreement concerning what the limits of each of these rights are and concerning how each of these rights should balance against other conflicting rights. Kant's theory does not help us resolve these disagreements.

There are cases where the requirements of the categorical imperative are unclear. One difficulty lies in trying to determine whether one would (as first formula requires) "be willing to have everyone follow" a certain policy. Suppose I am a thief. Would I then be willing to have everyone follow the policy that all thieves should be punished? In a sense I would be willing to because I would want to be protected from other thieves, but in another sense I would not be willing because I do not want to be punished myself.

Rights and Fairness

One of the most significant efforts to apply Kant to issues of contemporary society is found in the work of Harvard philosopher John Rawls, who takes the Kantian demand for fairness as central to any attempt to deal with questions of social justice. Rawls suggests that a truly fair society would be established according to rules determined by reasonable and unbiased persons. But how can we ensure that such persons act truly in an unbiased way? Rawls suggests that we create a thought experiment whereby we see what kinds of rules such persons would enact if they placed themselves behind a “veil of ignorance” – that is, without knowing where they would be in the social structure or organizational setup. For example, how high would you be willing to allow CEO (Chief Executive Officer) compensation to rise if you thought you might someday be CEO? Conversely, what minimum salaries would you agree to if you truly thought you might be a minimum wage earner? Given this veil of ignorance, what principles would you choose as a free, disinterested, and rational person? Rawls argues that you would choose first a principle that guards your right to liberty. That is, nothing is worth exchanging for your freedom, not a high-paying job, not social status, nothing. Accordingly, the basic and most important principle is that “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.”¹⁵ This Rawls calls the first principle of justice, and we can see here Kant’s notion of universalizing the principle, extending it to everyone, not just to ourselves.

Rawls’s second principle of justice is less obvious and is the one that has caused the most debate. He includes in it a provision for differences in outcomes (not all of us can be CEOs, and not all of us will be at the bottom of society or of a business organization). How unequal are we to allow our society to be and still be able to claim it is fair? Rawls says that the second principle will regulate this as follows: “social and economic inequalities are to be

arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all."¹⁶ In an organization the positions requiring higher levels of training, skills, or abilities will require higher levels of compensation. Everyone will benefit – stockholders, employees, managers, community – if an organization is staffed with capable individuals of varying abilities who receive varying levels of compensation. These positions, however, should be open to all: no “glass ceilings” on advancement because of gender or race, no exclusion from higher-compensated positions. Rawls makes clear in his analysis that we cannot justify trading off the basic liberty interests of anyone for the sake of an overall good. This is a response to the utilitarian's lack of emphasis on individual rights. Rawls's principles are useful for thinking about fairness not only within an organization but also as a way of thinking about the fairness of the marketplace.

The Morality of the Marketplace

The debate between consequentialists and deontologists in many respects parallels the ongoing discussion in contemporary society about how to promote fairness, and what should be the proper role of both government and business in a free society.

Achieving desirable consequences while balancing rights claims in a modern economic system seems at first difficult, and indeed it is, given the complexities of modern economic systems. Some contemporary philosophers, however, think that Rawls's Kantian approach can provide valuable insights in this regard. In broad terms, we can distinguish between the two principal kinds of systems by using terms that come from economics: command economies and demand economies. Command economies are those economic and social arrangements whereby a central authority allocates resources, directs the productive capacities of a society,

and sets up rules for the distribution of the products coming from business and industry. In demand economies, the forces of supply and demand provide the means of allocating resources and pricing goods. Evoking again the phrase coined by Adam Smith, these forces act as an “invisible hand” to guarantee that resources are allocated to those industries most responsive to consumer demand. Prices, too, reflect consumer demand. If a company is inefficient and therefore has to price its products accordingly, a competing firm that more efficiently produces its products for sale at a lower price will gain the larger share of the market, thereby forcing greater efficiencies on the industry as a whole. We see something of this process at work currently in the automotive industry, where firms that can offer a product with greater quality at a lower price are forcing competitors either to improve their product or to leave the marketplace.

Now that command economies, especially as they existed in the Marxist countries, have fallen out of favour, the demand approach to economy seems to be on the rise, although there are different versions of free market economies. It is possible, however, to add to the free market approach an element of command through national industrial policy and through cooperative arrangements among manufacturers and suppliers. These variations aside, demand economies seem best to satisfy some of the moral dimensions of right claims. In demand economies people are free to make their own choices of what employment they pursue, how they spend their money, and generally how they allocate their time. Another feature of demand economies is that they create a greater supply of goods and services, compared to command economies. That is, they generate more wealth than command economies do, and this greater overall wealth could, in principle, be available to help those in society who are the least well off – the sick, disabled, chronically unemployed, the homeless – though how best to make this available is not an easy question to answer. Demand economies, then, are able to

qualify as moral arrangements for society, provided they remain free from manipulation and unfair use of the marketplace. Here is how Velasquez applies Rawls's principles to the notion of a free market, demand economy:

Rawls claims that the more productive a society is, the more benefits it will be able to provide for its least advantaged members. Since the difference principle obliges us to maximize benefits for the least advantaged, this means that business institutions should be as efficient in their use of resources as possible. If we assume that a market system like ours is most efficient when it is most competitive, then the difference principle will in effect imply that markets should be competitive and that anticompetitive practices like price-fixing and monopolies are unjust. In addition, since pollution and other environmentally damaging "external effects" consume resources inefficiently, the difference principle also implies that it is wrong for firms to pollute."¹⁷

Note how the notion of fairness enters into the discussion of the free market. Fairness, this good Kantian notion of being willing to apply a principle both universally and to our own actions, leads to the conclusion that attempts by individuals or groups to manipulate the market to their own advantage violate this fundamental ethical norm. If I conspire with my competitors to agree upon a fixed price so that we all make money and are not forced to compete in the marketplace, then I have acted unethically by limiting the freedom of the marketplace. If I lie in my advertising and make false claims about my product, I have acted unfairly by lying to my customers, thereby depriving them of the truth on which to base a free choice as informed buyers. A major aspect of public policy debate, then, is over how best to ensure that the market remains truly free. Some argue that the market gets more freedom when the government stays completely out of it in a laissez-faire policy, but this conclusion might not follow from the application of Rawls's rules.

Aristotelian virtue ethics

Despite their radical differences, utilitarian and Kantian ethics have one common feature: both theories attempt to define certain standards that help in assessing the moral value of one singular and specific action. In other words, their question is, “What are the characteristics defining the morally good deed?” How can we prove that the decision of the managers from Merck & Co. to fund and distribute for free Mectizan was ethically valid? On what ground may we say that the decision made by the Ford managers in the Pinto case was morally wrong? etc. That is why utilitarianism and duty ethic belong to one class of ethical theories, named *action-based ethic*.

The so-called virtue ethic, inspired by the moral philosophy of Aristotle, proposes a different type of approach. Aristotelian ethic does not try to define the characteristic of the good deed, committed by a specific agent under particular circumstances. This type of moral philosophy is more interested to define the characteristics of the *good* person, expected to commit regularly good deeds. Its basic question is, “What are the traits that define a person of noble character?” This different type of approach is known as *agent-based ethic*.

The next case illustrates a typical situation in which people do not evaluate from a moral point of view a certain action, but the good or bad character of someone.

IVAN BOESKY’S STORY

Ivan Boesky, born into a family of modest means, moved to New York City when, as a young lawyer, he was turned down for jobs by Detroit’s top law firms. By the mid-1980s, the hard-working Boesky had accumulated a personal fortune estimated at over \$400 million. Moreover, he was CEO of a large financial services company. He was famous in financial circles for his extraordinary skills in arbitrage, the

art of spotting differences in the prices at which financial securities are selling on different world markets and profiting by buying the securities where they are priced low and selling them where they are priced high. As a prominent member of New York society, Boesky enjoyed a reputation as a generous philanthropist.

However, on December 18, 1987, Boesky was sentenced to 3 years in prison and a penalty of \$100 million for illegally profiting from *insider information*. According to court records, Boesky paid David Levine, a friend who worked inside a firm that arranged mergers and acquisitions, to provide him with information about companies that were about to be purchased by another party (usually a corporation) for much more than the current price of their stock on the stock market. Relying on this insider's information and before it became public, Boesky would buy up the stock of the companies on the stock market – in effect buying the stock from stockholders who did not realize that their companies were about to be purchased for much more than the current stock market price. When the purchase of the company was announced, the stock price rose and Boesky would sell his stock at a handsome profit. Although buying and selling stock on the basis of insider information is legal in many countries (e.g., Italy, Switzerland, Hong Kong), the practice is illegal in the U. S.

What drove a man who already had hundreds of millions of dollars and everything else most people could ever want and need to become so obsessed with making money that he deliberately broke the law? Much of the answer, it has been claimed, lay in his character. A former friend is quoted as saying, "Maybe he's greedy beyond the wildest imaginings of mere mortals like you and me." Boesky once described his obsession to accumulate ever more money as "a sickness I have in the face of which I am helpless." Others said of him that "He was driven by work, overzealous, and subject to severe mood swings. He vacillated between being loud, and harsh and aggressive, to mellifluously soft-spoken, charming and courtly. He was also fiendish about his pursuit of information. When it came to money and business dealings, he was quite ruthless and pursued his goal with a single-minded purpose. Although his first love was money, he hankered for the genteel respectability and status that are generally denied the *nouveau riche*."

The story of the fall of Ivan Boesky is the story of a man brought down by greed. What stands out in this story are the descriptions of his moral character – the character of a man driven by an obsessive "love"

of money. Boesky is described as being “greedy”, “sick”, “aggressive”, “fiendish”, and “ruthless.” Because what he said of himself did not match his secret dealings, some said he “lacked integrity” and others that he was “hypocritical” and “dishonest.”

All of these descriptions are judgments about the moral character of the man, not judgments about the morality of his actions. In fact, although it is clear that trading on insider information is illegal, the fact that the practice is legal in many countries and that many economists support it suggests that perhaps the practice is not inherently immoral.¹⁸

Though he lived more than two millennia ago, and had no knowledge of the intricacies of corporate existence (and did not even take much interest in commercial activity), Aristotle’s keen insights into the nature of the moral life, which is referred to as the good life, are still as valuable for us today as they were when he wrote them. In spite of the technological changes of our world, human needs are virtually unchanged, and the good life remains, as much for us as for Aristotle, a significant pursuit.

Intrinsic and Instrumental Goods

In his analysis of the moral life, Aristotle raises an important yet simple question. What is that we desire for its own sake? What is that “which is always desirable in itself and never for the sake of something else?”¹⁹ Aristotle made the important distinction between intrinsic and instrumental goods, even though he did not use these terms. An intrinsic good is something that is good in itself, like health. We seek health not only insofar it is good for something else, but because it is something we desire for its own sake. Of course, good health allows us to do many other things we would be unable to do were we in poor health, but we do not desire health so we can hold a job, go to school, or take walks in the evening. We value health for its own sake as an intrinsic good.

Other activities are important, therefore, because they contribute to health. We might like a steady diet of greasy hamburgers, but we have learned that vegetables are better. Instead of being a couch potato and letting our muscles atrophy, we know that good health requires regular exercise, so we jog, cycle, go to the health club, play basketball, or whatever, to aid our health. These activities are instrumental goods; that is, they contribute to our well-being by encouraging good health.

According to Aristotle, the supreme intrinsic good is happiness. Although each of us may have different activities that bring happiness, we would probably all agree with Aristotle that happiness is the chief and intrinsic good for the sake of which we do all these other things. And we would all agree on a range of instrumental goods that are essential for happiness. By happiness, Aristotle does not mean a passing emotional response but a state of being in which rational considerations guide us. His Greek word for happiness is *eudaimonia*. Happiness, in this sense of the term, is a fulfilled life, one that is lived according to reason and guided by moderation.

Another important aspect of Aristotle's view on happiness is that it is a goal reached by long-term behaviours, not short-term activity. This emphasis on long- versus short-term considerations set Aristotle apart from those – of both his contemporaries and ours – who advocate the immediacy of the reward. If we apply these concerns to a business context, we would have to say that business's intrinsic goal, like happiness, is long-term profitability.

There are two important corollaries to Aristotle's analysis. First, happiness is a quality of life that one generates throughout one's life. It is not something that we can say we have achieved in a few months. To seek happiness is a lifetime activity. "One swallow does not make a summer", Aristotle says, "and so too one day, or a short time, does not make a man blessed and happy."²⁰ To assess your pursuit of happiness requires that you take a long-term

rather than a short-term perspective. The second aspect of happiness, according to Aristotle, is that one cannot seek it directly, for happiness derives from other goals that we can seek directly. For example, if we are to be happy, we must have enough wealth to free us from poverty. We need health and freedom from disease and disability, and we want success in our chosen work. A circle of companions and friends contributes to one's basic sense of well-being.

Friendship is so important to Aristotle that he devotes more discussion to it in his ethical writing than to any other single topic. Human beings are by nature social creatures, he thinks, and to develop our humanness fully requires that we have meaningful relationships with other people. Aristotle, in other words, is not a rugged individualist. He believes that we find fulfilment in mutually satisfying relations, and these contribute to happiness; Aristotle, in fact, defines happiness as "activity in accord with virtue."²¹ In other words, we achieve happiness – in this sense of well-being – by achieving moral virtue, by being honest, loyal, and through becoming interdependent human beings.

Commenting the Aristotelian theory, David Stewart suggests an interesting analogy between happiness and profit.

By making only a few alterations we can use the language of Aristotle to describe the goals and purposes of business. What *eudaimonia* is to the individual, profits are to the business organization. Without profits, a business dies. Without profits, a business cannot offer employment, make products, or pay investors a return on equity. And just as individuals achieve happiness by seeking other goals, there is growing evidence that the business goal of profit can be best sought if a company first pursues such goals as enduring quality of its product, service to its customers, and a commitment to ensuring a stable community and work force.²²

Virtue as Excellence: Two Types of Virtue

The key word for Aristotle is virtue, but the English word virtue is an imperfect translation of the Greek word *aretē*. It can mean not only moral virtue (such as courage, loyalty, generosity, etc.), but excellence in a broad sense.²³ Aristotle, in fact, suggests there is an *aretē*, or excellence, for every kind of activity – that is, we can seek excellence in personal relations as well as in business relations, and both would be examples of virtue (understood in the sense of excellence). Even animals can have virtue in the Aristotelian sense, for the term implies quality and excellence appropriate to the kind of activity described. When business leaders talk about the need for total quality management, when a manufacturing firm claims that “quality is job one,” or when a company says its trademark is “the mark of excellence,” these are all references to that same concept Aristotle captures in *aretē*.

Aristotle finds virtue, or excellence, to be of two types. One type of excellence you can learn by training: how to run a computer, how to do calculus, how to operate a lathe or a machine gun. These Aristotle calls intellectual virtues. Other virtues can only obtain through habitual behaviour; these he calls moral virtues and argues that we develop them by engaging in moral activities. As Aristotle puts it, “Men become builders by building and lyre-players by playing the lyre; so too we become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts.”²⁴ Because we develop moral habits over a lifetime, it matters a great deal how we behave ourselves as we learn what kind of persons we want to become. “It makes no small difference,” Aristotle says, “whether we form habits of one kind or of another from our very youth; it makes a very great difference, or rather all the difference.”²⁵ Morals, like manners, are part of the training young people receive in a society in order to help them function well and be successful at the business of a human being.

To put this in an Aristotelian context, consider what we mean by calling someone a moral person. To be moral does not mean that

one occasionally performs a moral act; even immoral persons do moral things sometimes, but we could not call such a person moral just because of an occasional good deed. A truly moral person is one who has developed a moral disposition through the development of right habits and whose behaviour is, as a result, consistently moral. This Aristotelian point is well summarized by C. S. Lewis, who points to the difference between doing something that is just or temperate and being a just or temperate person. It is the difference, he says, between being a good tennis player and merely having a lucky shot now and then. "What you mean by a good player is the man whose eye and muscles and nerves have been so trained by making innumerable good shots that they can now be relied on." In a similar way, he says, a person "who perseveres in doing just actions gets in the end a certain quality of character. Now it is that quality rather than the particular actions which we mean when we talk of 'virtue'."²⁶

The Aristotelian virtue theory emphasizes the importance of moral development rather than dependence on specific moral rules. His teaching does not mention a list of moral norms, but recommends the cardinal virtues whose persevering practice would make a good person. According to Aristotle, the values to be developed are best learned by studying the lives of heroic persons. Societies where virtues such as honesty, fidelity, honour, and generosity are the norm, point to great individuals as models that provide the guidance for individual moral action. Aristotle thinks all the virtues are communicated this way. Confused about honesty? Look to stories of honest behaviour, in spite of the consequences, as related in sagas and epic poetry. To find out what courage is examine the lives of brave persons to discover how to act courageously. Virtue theory also emphasizes the importance of history and literature, for they are a society's cultural memory and provide examples of admirable conduct to imitate and of abhorrent conduct to avoid. Thus, too, in business, moral values are often communicated by stories about the company's founders or its

leaders who remained true to the company's moral ideals even when financial disaster loomed and the temptation was strong to sacrifice values for the bottom line.

The goal of moral instruction is to develop the character traits similar to those of outstanding individuals, to model one's behaviour after the examples of courage, fortitude, honesty, integrity, and loyalty of the tradition's cultural heroes. What does it mean to be honest? A story from the American cultural tradition that would serve as a model is from the life of Abraham Lincoln: while working as a shopkeeper's assistant, he walked several miles after work to return a few pennies to a woman he had inadvertently overcharged. Half a century ago, we could take the example of Mociorniță, a poor young boy who left his village barefoot and through hard work, honesty, compassion for his workers, and temperance has built a small industrial and commercial empire before the Second World War. But this is one of the most tragic differences between the American society and Romania: Abraham Lincoln finally became the President of the United States, whereas Mociorniță has been arrested by the communists, convicted for being a capitalist exploiter of his workers; he has lost everything, including his family, and died poor, hated, and despised for his achievements. For fifty years, the communist propaganda imposed the "working class heroes" on us, as models of courage (to steal the assets of the "bourgeoisie"), devotion and loyalty (to the communist party) or love for truth (of those who did not hesitate to denounce their relatives, companions, colleagues or friends to the Securitate). And, of course, the supreme model of humanness came to be for more than two decades Nicolae Ceaușescu! Now we have banned the communist regime, but we did not restore the old, traditional models (very few, as a matter of fact, because the history of the Romanian capitalism was very short). Our young people learn in school about Decebal, Mihai Viteazul or Ștefan cel Mare – heroic historical figures, no doubt, but totally irrelevant for the promoters of the market economy in a global world!

In contemporary society, this storytelling feature has been taken over by popular culture media – films, television, mass market fiction, rap lyrics – and the values they extol may have more influence on the developing attitudes of young people than all the ethics classes offered in all the schools in the country. How this relates to business context is apparent: if society's popular culture presents business leaders as rapacious scoundrels and business activity as opposing the public good, then the message transmitted to young people is that business is not an ethical activity and that to be successful in business demands the suspension of our ordinary standards of conduct. Within companies, this same dynamic is at work. If the company's corporate culture fills with stories of predatory business practices and legal but not necessarily moral activities, the message to employees is clear: do anything you have to do, cut any corners possible, to advance the company's interest.

However, there is a moral principle stated by Aristotle. Best known in Latin as *aurea mediocritas*, this principle is often misunderstood. It is not about mediocrity, as we understand the meaning of the modern word – and which, certainly, is not a moral virtue. Better translated from Greek as the “Golden middle”, Aristotle's principle holds that we should strive to avoid excessive behaviours, seeking to attain the perfect moderation. Each moral virtue has a “too much” and a “too little.” These are vices. Lack of courage, for instance, is cowardice; excessive courage is recklessness. The virtue of justice may be decay in excessive severity or excessive tolerance, and so on. Each one of us is inclined, by virtue of his inner nature, towards one vice or the opposite. We have the duty to fight against excesses, trying to come as close as possible to that ideal, hypothetical middle – the perfect balance between the opposite vices. Therefore, “The Golden Middle” is a rule of self-education and not a decision-making pattern, seeking to reach a convenient compromise between conflicting interests.

Virtue Theory and Business Ethics

Let us sum up: According to Aristotle, *eudaimonia* is the supreme intrinsic good; happiness or well-being is the most natural and the most important goal in one's life. It is in everyone's self-interest to strive for happiness. However, real happiness cannot be achieved without the development of the cardinal virtues, which requires a life-long habituation with good, noble, and generous acts. Consequently, a wise person should realize that being moral – that is, full of virtues – does not conflict with his or her self-interest; on the contrary, only virtue leads to the most fulfilled and flourishing life. What could the Aristotelian theory suggest in business ethics?

If happiness is the intrinsic good of human life, the intrinsic good of any business is profit. The literature of philosophy abounds with discussions of profit, ranging from its eloquent defence by philosophers such as Adam Smith and John Locke to attacks from other philosophers such as Karl Marx. Today, profit is viewed as potentially a contribution to the public good by providing the basis for job creation, economic growth, and technological innovation. Given the importance of profitability to business success, the question Aristotle helps us answer is what kind of behaviour best aids a company's profitability. Happiness is the intrinsic good of one's life, but it may not be achieved directly; in order to live a flourishing life, one has to pursue several essential goals, as instrumental goods, such as wealth, health or friendship. Similarly, profit is the intrinsic good of business but, to make it, a company must pursue some other goals, such as the quality of its products or services, fair prices, fair salaries, the satisfaction of customers and employees, the protection of the environment, good relationships with the local community, and so on.

There are economists who disagree with this Aristotelian approach on purely economic grounds, one of the most well known of whom is the Nobel Prize winner Milton Friedman. He argues that the only social responsibility of business is to increase its profits.²⁷⁹

His claim bases on the assumption that the corporate executive is responsible to the stockholders who entrusted their money to the company in order to gain a return on their investment. The shareholders may use their earnings for whatever social purposes they wish, but it is irresponsible, Friedman argues, for the executive officers to make those decisions for the stockholders by spending their money on a variety of social causes. Up to a certain point, we could say Friedman is correct: the intrinsic good for a business concern is to generate profits. However, Friedman is in error when he maintains that a business can ignore its other commitments, since these commitments are instrumental goods that contribute to its overall success.

The arguments against Friedman's narrow vision are compelling. Consider, for example, the quality (excellence, *aretē*) of a company's product. A firm might think that it could boost profits by cutting the quality of its product, perhaps in little ways that management thinks no one would notice. Alternatively, management might try to improve productivity by imposing harsh work rules on its employees. In their book *In Search for Excellence*, Tom Peters and Robert H. Waterman, Jr., give numerous examples of how successful companies attribute their success to goals other than profits: make a good product, treat your customers fairly, deal with your employees with attitudes of trust and support.

The research done by Peters and Waterman shows, however, that some managers are not clear on the need to focus on values other than profits. "Some colleagues who have heard us expound on the importance of values and distinctive cultures have said in effect, 'That's swell, but isn't it a luxury? Doesn't the business have to make money first?'" The answer is that, of course, a business has to be fiscally sound. And the excellent companies are among the most fiscally sound of all. But their value set integrates the notions of economic health, serving customers, and making meanings down the line." In language that could be straight from

Aristotle, the authors go on to report, "As one executive said to us, 'Profit is like health. You need it, and the most the better. But it's not why you exist.' Moreover, in a piece of research that preceded this work, we found that companies whose only articulated goals were financial did not do nearly as well financially as companies that had broader sets of values."²⁸

Consider, too, Aristotle's emphasis on the importance of friendship for the achievement of happiness. There is a business correlate here: although it does not seem appropriate to speak of a business having friends, it can have loyal customers, faithful stockholders, and dedicated workers. Part of the success of Japanese manufacturing has been attributed to its practice of cultivating networks of suppliers and distributors in what is called *keiretsu*. In such relationships, manufacturers and suppliers cooperate to produce the best product at the lowest cost. In his book *Head to Head: The Coming Economic Battle among Japan, Europe, and America*, Lester Thurow describes this approach as a kind of preferential treatment that "comes in the form of buyers and sellers who are willing to work together to insure that the Japanese keiretsu supplier is in fact the best supplier." There are advantages to this form of social cooperation that translate into enhanced business activity. "As a group, keiretsu members have the advantages (size and coordination) of being a conglomerate without the disadvantages (excessive coordination) of being a conglomerate. Member companies pressure each other to grow and can coordinate their planning."²⁹

In Aristotelian terms, we should ask, "What are the cardinal virtues that must be developed in practice by a successful business leader? What kind of business relations is the most beneficial for a sound and profitable business activity?" Thurow analyzes two forms of free market capitalism, which he labels "individualistic" capitalism and "communitarian" capitalism. The former characterizes business activity in the United States and Great Britain, the latter the economies of Japan and Germany. He sees

this contrast most clearly in the values that each form of capitalism encourages: “America and Britain trumpet individualistic values: the brilliant entrepreneur, Nobel Prize winners, large wage differentials, individual responsibility for skills, easy to fire and easy to quit, profit maximization, and hostile mergers and takeovers – their hero is the Lone Ranger. In contrast, Germany and Japan trumpet communitarian values: business groups, social responsibility for skills, teamwork, firm loyalty, industry strategies, and active industrial policies that promote growth.” Thurow thinks that differing attitudes towards business relationships also translate into differing business strategies. “Anglo-Saxon firms are profit maximizers; Japanese business firms play a game that might better be known as ‘strategic conquest.’ Americans believe in ‘consumer economics;’ Japanese believe in ‘producer economics’.”³⁰

Both in Aristotle’s ethics and in communitarian forms of capitalism, individuals find meaning in being part of a larger whole. For Aristotle, this starts with the family, circles of social friendships, then the political entity. Although organized productive enterprises such as the modern corporation were unknown to Aristotle, it is not difficult to extrapolate from his writings to see how he would react to modern business activity. It would have struck him as somewhat unnatural for an individual to feel no loyalty to a business organization or for the business to feel no loyalty to its workers. In contrasting the two forms of capitalism, Thurow points out that “firms that effectively provide security to generate group solidarity obtain employees who are more directed in their focus, more willing to mobilize and prolong their effort to meet firm goals, more willing to sacrifice immediate self-interests, and more interested in achieving the goals of the firm.” In contrast to this communitarian approach, the “Anglo-Saxon-shareholder wealth-maximization view of the firm explicitly denies the legitimacy of the group. Only individual capitalists count. All other humans are simply rented factors of production.”³¹

Mentioning the two forms of capitalism here is not to argue that one market system is better than the other system. Two decades after the first edition of Thurow's book, some changes could notice. The Japanese miracle has stopped – at least for a while – its engine; in the last ten years, the Japanese economy ceased to grow. In its turn, Germany was no longer the “locomotive” of the Western European economy, but the sick member of the E.U. On the other hand, the extreme individualistic approach to personal business relationships is no longer a widespread characteristic of the Western form of capitalism. According to Tom Peters and Nancy Austin, the best-run American companies are already establishing “almost familial relations between suppliers and producers.”³² It is clear, from reading both Aristotle as well as the contemporary literature on business practice, that people matter. Whether the people are workers or customers, how business treat people is a key to their success. Again, Peters and Waterman are guides here when they say, “The excellent companies have a deeply ingrained philosophy that says, in effect, ‘respect the individual’, ‘make people winners’, ‘let them stand out’, ‘treat people as adults’.”³³¹⁵

One could argue, that the two value systems are not mutually incompatible, that a middle ground would combine the social cooperation of communitarian forms of capitalism with the initiative of individualistic forms of capitalism, thereby capturing the best features of both. Such an approach would incorporate another Aristotelian theme: moderation in all things through seeking the mean between extremes. Here is how Aristotle defines virtue: “Virtue, then, is a state of character concerned with choice, lying in a mean, i.e., the mean relative to us, this being determined by a rational principle, and by that principle by which the man of practical wisdom would determine it.”³⁴ Aristotle thought of the moral virtues as character traits that corrected some typical excesses and deficiencies of human beings. Courage was supposed to correct the defects of, on the one hand, cowardice, and, on the

other hand, recklessness. Temperance introduced a measured attitude to pleasure and corrected the defects of, on the one hand, over-indulgence, and, on the other, excessive austerity. It is harder to give a neat pair of the defects that justice corrects. Meanness and profligacy would be one pair in the sphere of just distribution, lenience and severity would be another pair, appropriate to penal justice. But these three – courage, temperance, and justice – were taken to be the chief virtues.

They are a reasonable selection to make if one denies that flourishing is primarily to do with pleasure, primarily to do with wealth, or primarily to do with power or honour. Aristotle's theory developed with an awareness of these different conceptions of flourishing, and up to a point in opposition to them. What Aristotle's account denies is that pleasure, wealth, power and so on can really be things for whose sake all activities are conducted. They cannot individually be what flourishing consist of, for we can think of lives dedicated to the pursuit of them that would not be desirable. Not that power, wealth, honour and pleasure are worthless, or that they cannot contribute to well-being. They can contribute to well-being, but only when the pursuit of them is kept under control by the virtues – the pursuit of wealth and power by justice; the pursuit of honour by courage, and the pursuit of pleasure by temperance. In neo-Aristotelian accounts, the list of virtues associated with flourishing is longer than Aristotle's list of three. Generosity, honesty, friendship, conscientiousness, prudence and many other virtues might add to those emphasized by Aristotle.

The theme of moderation also reinforces the Aristotelian emphasis that one's enlightened self-interest – and, by extension, a company's interest and profitability – can best be served when the individual or company focuses on other values. Happiness, and profit, accompanies the achievement of other goals. The testimony of business leaders on this point is compelling. Tom Peters and Nancy Austin cite the following statement from Edson P. Williams, a vice president of Ford Motor Company and general manager of

Ford Truck Operations: "I'd have to say that our culture in the Ford Motor Company said that there's one central objective in our business, and that's to earn a return on our investment. I think we've now learned there's something else that's central – and that profits will fall to you if you view this as central: serve the customer." Acknowledging that costs and quality are important, he goes on to add, "But we must always think the customer is the middle of the thrust of what we're trying to do. I think that's what we've learned. I don't think it's more complicated than that."³⁵

The Limits of Virtue Theory

The Aristotelian ethics could be an efficient guide of moral behaviour in business on one necessary condition: a homogeneous and stable society, whose cultural traditions and values are undisputable. However, we are not living in such a world nowadays. Today people argue from widely different premises, some that moral values come from the will of God, others that morality is what makes us individually happy ("do your own thing"), others that individual rights take precedence over all other rights, still others that "the individual" is an outmoded ideal and that the good of society should be our primary goal. In his book *After Virtue*, Alasdair MacIntyre – a contemporary advocate of virtue theory – claims, "the most striking feature of contemporary moral utterance is that so much of it is used to express disagreements; and the most striking feature of the debates in which these disagreements are expressed is their interminable character." What this means in practical terms, according to MacIntyre, is that "there seems to be no rational way of securing moral agreement in our culture."³⁶ We are tempted to think that morality is nothing but the expression of personal preferences, what MacIntyre calls "emotivism," the support for which is not reason but rhetoric.

Thus, a major difficulty in the application of virtue ethics is the question of an increasingly multicultural society. When there is a commonly held cultural ideal, as was the case in Aristotle's ancient Greece, it is easier to understand how a homogeneous society can agree on the shared values that are to communicate through the deeds and exploits of cultural heroes. But what of a multicultural, multiracial society, to say nothing of the challenges of the increasingly global dimension of business activity? It is hardly possible to conceive of what a common world culture would be like, even if we hold the view that fundamental moral values run as constants through cultural differences. Applied in the contemporary world, virtue theory seems to imply a relativist position, with its emphasis on shared cultural traditions and the apparent rejection of any grounds for ethics other than a shared cultural tradition.

Even if we put aside the difficulties of ethical relativism, we must notice another limitation of virtue theory. A shared set of values, most frequently communicated through tales and the recounting of heroic deeds of exemplary figures from the past, has an obvious limitation in that it does not provide much guidance for thinking about ethics in novel situations. What standards, for example, should we apply to leveraged buyouts, hostile takeovers, plant closing, restraints on multinational corporations, or the many issues forced on us by the complexities of an emerging global economy? The virtue theory approach provides even less guidance than we have from other ethical theories when dealing with different cultural traditions. Matters of international business ethics are so difficult precisely because they involve the clash of cultures and differing standards of conduct. Nonetheless, virtue theory provides many important insights into moral decision-making, but by itself seems wanting in ethical guidance.

Conclusions

Sometimes, analyzing one situation according to different ethical theories, we may reach different or even opposite conclusions. Let us say, for instance, that a malfunction at a chemical plant exhaled in the air a small amount of poisonous gas that cannot be hazardous to the health of the employees or the inhabitants in the area. The top managers of the plant decide to keep secret the incident to avoid responsibilities and the legal obligation of stopping production and of investing in expensive, safer new equipment; they also demand the workers to be discrete and not say a word about the incident. From the viewpoint of act utilitarianism, this is an ethical decision, since the probable losses of the people who inhaled the gas are negligible, whereas so many people benefit. Workers keep their jobs and get their salaries, the managers keep an honourable face, the consumers find the merchandise on the market, and the shareholders do not suffer smaller dividends. If we take a Kantian or Aristotelian perspective, the decision is deeply immoral. Asking the employees to lie about the incident cannot pass either the Kantian tests of universality, necessity, and reversibility, or the Aristotelian test of honesty and integrity. Keeping to run a hazardous business is also unacceptable from both duty ethic and virtue ethic perspectives.

If we adopt a rule-utilitarian viewpoint and extend the frame of our analysis, even a utilitarian examination of the case will lead to the same conclusion: managers' decision is ethically wrong. Most often, even though the arguments may be different, all three analytical frames – utilitarian, Kantian, and Aristotelian – reach identical conclusions. This fact denies the relativist scepticism about the possibility of ethical theories to ground rational ethical decisions in business.

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5

ENLIGHTENED SELF-INTEREST

Competition and cooperation in business

The different ethical theories analyzed in the previous chapter can help in making business decisions that comply with moral norms and respect moral values. However, one essential question is still open: Why should business strive to be profitable in an ethical way? After all, some people say, maximizing profit is the intrinsic value of business, and strict legality remains the basic strategy to make that value flourish. Perhaps in an ideal world, described in the utopian writings of philosophers, everybody would seek a “reasonable” profit, made by ethical methods. Perhaps. However, in the real world investors, managers, and their companies are willy-nilly engaged in tough, sometimes merciless competition, that puts out of business idealists who care about the interest and rights of the other players of the economic game. Therefore, these people say, ethics is an optional and occasional luxury in business; the winners must focus upon economic issues, doing everything necessary to beat the competitors within the limits of the law.

It is hard to underestimate the importance of competition in capitalist economy, but its moral evaluation divides, once again, people with different ideologies. Some worship the virtues of competition – the engine of economic growth, giving people a constantly increased variety of goods and services, of a higher quality, safety, and reliability, at constantly lower prices. Not denying these virtues, their opponents emphasize the shortcomings and bad consequences of tough competition: periodical crisis,

irrational waste of resources – spent to satisfy the superficial and eccentric wants of a crowd blinded by the consumerist ideology – the unfair distribution of income, which very often ignores the social utility of different occupations, tragic bankruptcies, unemployment, and social instability.

In part, these arguments base on a superficial understanding of the relationship between competition and cooperation in market economy. In ordinary thinking, precisely the harsh competition is the reason why so many people have serious doubts about the claimed morality of business, since in their (otherwise correct) opinion morality is associated with human solidarity and cooperation. Those who, placed inside or outside of the business environment, think that “business ethics” is an oxymoron are tempted to idealize ethical behaviour, which they associate with altruism and generosity, pretty close to holiness, whereas business is demonized, being definitely associated with greed, selfishness and aggressiveness.

In fact, competition is intimately associated with cooperation in business activities and none of them should approach in maximalist terms. Cooperation is absolutely needed in business environment, even though most often its roots are not altruistic, but self-interested; on the other hand, rational self-interest is the factor which opposes economic competition becoming a deadly war, keeping it within the limits of a tough duel, ruled by written and unwritten laws, which sanction mercilessly excessive aggressiveness and dirty play.

This kind of quarrels, driven by ideological motives, makes very difficult the mission of those who strive to build business ethics as a rational, demonstrative discourse. In the current global context, given the remarkable variety of moral norms and values which different cultures and societies worship and recognize, this task becomes even more difficult. Nowadays, the dominant trend in ethics and axiology is relativism, which claims there are no universal moral principles, but only specific cultural patterns of

right and wrong, good and evil; the way different people conceive of moral integrity can pretty much vary from one society to another, sometimes giving birth to incompatible ethical approaches. If cultural and ethical relativism is true, then any attempt to elaborate business ethics as a theory and practice focused on applying universal moral values and norms in the specific realm of business faces a serious problem, as long as ethical theories disagree at the ground level of first order principles, and different cultural spaces support various norms and values.

Self-interest

The maximizing standpoint is not specific to business, but it is a possible general view of life and people, very often held by common sense. Its name is egoism, and its central point is that every individual must and may seek only his or her personal happiness, which means the fulfilment of his or her desires and interests.

Whether egoism is morally valid raises a difficult and, maybe, rationally unsolvable problem. Reason cannot prove that one should care unconditionally about the others; some people believe and feel this way – guided not only by their mind, but primarily by their heart – while some other people do not. However, plain or narrow-minded egoism is unacceptable as a reasonable theory even from the standpoint of self-interest. It is not difficult to imagine what would happen in a world in which everyone should care only of personal interests. Such a world would remind of the savage “state of nature”, described by Thomas Hobbes (1588-1679) in his famous *Leviathan*. Pessimistic about human nature, Hobbes defines humans as bloodthirsty wolves, governed by aggressive instincts, always prone by their inner impulses to attack everyone else, ruthlessly seeking an immediate satisfaction of their selfish desires.

In the nature of man we find three principal causes of quarrel. First, Competition; Secondly, Diffidence; Thirdly, Glory. The first, maketh men invade for Gain; the second, for Safety; and the third, for Reputation. The first uses Violence, to make themselves Masters of other mens persons, wives, children, and cattell; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other signe of undervalue, either direct in their Persons, or by reflexion in their Kindred, their Friends, their Nation, their Profession, or their Name.¹

Unrestricted by any social authority, in this hypothetical state of nature, men are permanently at war: "such a war, as if of every-man, against every man."² Although the prospect of pursuing our own self-interest, unhampered by bureaucrats, environmental protection laws, taxation policies, restraints of trade legislation, and other limitations on our conduct, might at first seem attractive, Hobbes shows why it is not. In such a state of nature, everyone would be at war with everyone else, and all would be constantly at risk of losing property and life. The standards of behaviour of civil society would be absent, and violence would be the order of the day. The words justice and injustice would have no meaning, and only the interests of the strongest would prevail. Hobbes pictures very vividly the miserable consequences of this generalised hostility:

In such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of commodities that may be imported by sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, brutish, and short.³

All rational persons, Hobbes thinks, would want to find a way out of the brutish hostilities of the state of nature. Getting ourselves out of the state of nature, Hobbes argues, is simply a matter of good sense and reason. We will be better off when pursuing our own

self-interests if we accept some constraints on our actions in return for restraints being accepted by others. We will be freer, even though we have accepted constraints, because we are no longer in danger from everybody else. Only in an organized and civil society can the forces of business and industry function well. We see this point illustrated all too clearly in countries where there is civil disorder, as consequence of war or governmental upheaval. Hobbes, however, thinks that most people are not sufficiently enlightened to seek their own best interests, so he advocates the development of a strong sovereign power to force people to follow the laws of nature. Though Hobbes is an important figure in the history of political theory, he is definitely not a defender of democracy.

Being in a civil society means that we accept the responsibility of obeying the law, abide by our private agreements, and submit disputes to impartial judges. We arrive at such ethical principles, Hobbes argues, by using natural reason (natural here as opposed to supernatural revelation). Says he,

The passions that incline men to peace are fear of death, desire of such things as are necessary to commodious living, and a hope by their industry to obtain them. And reason suggesteth convenient articles of peace, upon which men may be drawn to agreement.⁴

The following are some of the natural laws drawn from Hobbes's discussion that are most applicable to the practices of business:

1. We should claim as much liberty as we are willing to grant to others.
2. We should keep promises and perform contracts to which we have agreed.
3. We should not demand of others things we are unwilling to do ourselves.
4. Things that cannot be divided should be shared in common.
5. People who disagree should submit their dispute to arbitrators.

This is an interesting list not only because it seems to reflect the moral precepts that we have learned from many other sources but also because its doctrine of self-restraint starts from the premise that self-interest is the motivating force behind human behaviour. However, Hobbes tests the limits of self-interest and shows that unrestrained self-interest is not in one's interest at all.

The ethical legitimacy of self-interest gets a strong support in the classical liberal economics elaborated by Adam Smith in his famous *Wealth of Nations*. Due to the benefits of division of labour, each economic agent is supposed to follow his own self-interest, striving to maximize his profit. In Smith's salient phrase,

It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity, but to their self-love, and never talk to them of our own necessities, but of their advantages.⁵

According to Smith and his long tradition, free market competition is the best way to serve the general good. Let alone to follow their selfish interests, the investors and business leaders will strive to fulfil optimally the social needs and wants. It is also a standard quotation Smith's phrase about the "invisible hand" – even though this phrase appears only once in his extended work. The individual, says Smith,

intends only his own gain; and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest, he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good. It is an affectation, indeed, not very common among merchants, and very few words need be employed in dissuading them from it."⁶

As long as pursuing self-interest leads to the best outcomes for the society as a whole, the only rational thing to do for a business-person is to seek permanently to maximize his profits. However, it is a mistake to construe rationality in terms of maximizing. For individuals each to seek to maximize their own pay-off can lead to sub-optimal outcomes assessed in maximizing terms. It may seem like a good idea for me to maximize irrespective of what others do, but if it is really a good idea for me, it is a good idea for them too, and then we shall all be worse off than if we had each pursued a policy that considered others as well as ourselves. Rationality requires us not just to maximize, but also to widen our range of concern. We accept that it would be foolish to be guided only by immediate pay-offs without considering future ones; we need to extend our vision not only over times, but over persons, identifying with certain groups, and thinking not only of my individual good, but our collective one as well.

Competition is not an ultimate end, but a framework of relations and interactions between individuals and groups, in which all the players of the economic game pursue the best outcomes that everyone can obtain. Contrary to a *prima facie* perception, the best outcomes come out not by a permanent aggressive attitude, meant to destroy the other competitors, but by a smart combination of competitive aggression and cooperative behaviour. Narrow-minded egoism is not only to blame on the ground of its immorality; some people would stick to their conviction that business has nothing in common with ethical commitment. Yet plain egoism should be rejected as an irrational strategy, because, pursuing the best outcomes for the individual and his personal interests by means of aggressive behaviour, eventually everybody will be worse off. This counterintuitive point finds a convincing support in the Game Theory, which has a lot to tell us about competition and cooperation.

Social dilemmas and theory of games

Imagine that you have to make a choice between cooperating with others in your group and pursuing your own self-interests, which can hurt the others. Examples of these mixed-motive situations are everywhere. An actor in a play may be tempted to "steal" a scene, to emphasize his presence. A basketball player may be inclined to hog the ball. An executive may want to keep more of the company's profits. A family member may want to eat more than her fair share of the leftover birthday cake; and a citizen of the earth may want to use more than her fair share of finite, valuable resources. In each case, the individual can gain something by pursuing his or her self-interests; but if everyone in the group pursues self-interests, all of the group members will ultimately be worse off than if they had cooperated with each other. Each option, therefore, has possible benefits along with potential costs. When you are in a situation like this, you may feel torn between wanting to cooperate and wanting to compete, and these mixed motives create a difficult dilemma. What do you do?

The notion that the pursuit of self-interest can sometimes be self-destructive forms the basis for what we call a social dilemma. In a *social dilemma*, what is good for one is bad for all. If everyone makes the most self-rewarding choice, everyone suffers the greatest loss. The conflict theory focuses attention on the relationship between people's goals, the competitive or cooperative nature of their behaviour, and the conflicting or harmonious nature of their relations.

Trying to stay apart from the ideological conflicts, a group of theorists tried to found the basic ethical principles on rational arguments, which ignore the cultural specificity or irrational ideological commitments, appealing only to logical demonstrations, which could claim to be universally valid, like scientific theories. One of the possible ways to support the ethical behaviour in

business with solid, rational arguments is the so-called game theory. Not at all surprising, since for some people economic competition really means some kind of a game. “In a capitalist system,” says Boatright, “firms must compete effectively in an open market and make a profit. [...] business has often been described as a game, in which the aim is to make as much profit as possible while staying within the rules of the game, which are set mainly by government.”⁷

Prisoner's Dilemma

Without little exception, the beginning (and quite often the end) of the demonstration refers to the famous Prisoner's Dilemma. Introduced by Luce and Raiffa (1957), and thoroughly analyzed by Rapoport (1976), the Prisoner's Dilemma is the most widely researched game. It looks like a detective story. Two partners in crime are picked up by the police for questioning. Although the police believe they have committed a major offence, there is only enough evidence to convict them on a minor charge. In order to sustain a conviction for the more serious crime, the police will have to convince one of them to testify against the other. Separated during questioning, the criminals weigh their alternatives (see Figure 1 below). If neither confesses, they will be both get light sentences on the minor charge. If both confess and plead guilty, they will both receive moderate sentences. But if one confesses and the other stays silent, the confessing criminal will secure immunity from prosecution while the silent criminal will pay the maximum penalty.

Prisoner A			
		No Confession	Confession
Prisoner B	No Confession	A gets 1 year B gets 1 year	A gets 0 years B gets 10 years
	Confession	A gets 10 years B gets 0 years	A gets 5 years B gets 5 years

In the two-person prisoner’s dilemma, participants are given a series of choices in which they have the option of cooperating or competing. If both individuals make the cooperative choice, both make a moderate reward. If both make the competitive choice, both suffer a moderate loss. But if one cooperates while the other competes, the competitor obtains a large reward, and the co-operative suffers a large loss. Look at the figure and imagine that you are Prisoner A. It appears that no matter what Prisoner B does, you are better off if you compete with B and confess. If B does not confess to the police (in other words, if he cooperates with you), you get a lighter sentence if you do confess (in other words, if you compete with him by not staying quiet) than if you do not confess – if you confess, you get no jail; if you do not confess, you get one year. If B does confess, you still get a lighter sentence if you confess than if you do not – five versus ten years. So, clearly, you should confess, right? Yet here’s the dilemma: If you both confess, each of you gets five years. If neither of you confesses, each of you gets only one year. It is really a perplexing situation.

There is no solution to the Prisoner's Dilemma. From a purely self-interested point of view (one that takes no account of the other's interests) it is rational for each prisoner to confess – and if each does what it is rational to do from a self-interested point of view, they will each be worse off than they would have been if they had chosen differently. The dilemma proves that when each of us individually chooses what is in our own interest, we can each turn out to be worse off than we would each have been if we had both made a choice that is in our collective interest.

You are unlikely ever to find yourself in the situation of the two prisoners. Nevertheless, there are many everyday illustrations of the Prisoner's Dilemma. Anyone who has spent some time in rush hour traffic knows that, while it may be in one's individual interest to take his car to town – since the buses also get held up in traffic, and they do not run very often anyway – it would be in the interest of everyone if people could all collectively decide to go by bus, since then the bus company could afford to run a much more frequent service, and without the traffic, they would get to work in half the time. This kind of social dilemma is not limited to situations involving only two individuals at a time. Imagine, for example, being in a burning building or in a sinking ship, as illustrated in movies like *The Towering Inferno* and *Titanic*. Everyone might want to race for the exit or the lifeboats as quickly as possible and push others out of the way; but if everyone does that, more people will die in the panic. More lives would be saved if people leave in an orderly fashion. Nations face such dilemmas as well. Two countries locked in an arms race would be better off if they stopped spending money and resources on weapons of mass destruction, but neither country wants to risk falling behind the other.⁸

The Peasant's Dilemma

Frequently quoted and analyzed, Prisoner's Dilemma is not, however, an adequate description of competition and cooperation in business. Whereas the two criminals have to solve a one-off situation, business partners find themselves in repetitive situations, planning to play the same game indefinitely. This fact radically changes the logic that should guide the rational decisions of each player.

Grasping very clearly the essence of this change of rational analysis, Peter Singer invents another story, which he names "Peasant's Dilemma." Living in a small rural community, two farmers – Max and Lynn – are neighbours. Max's crop is ripe and it must harvest as soon as possible; Lynn's crop still has to wait. Max starts to work, but rainclouds are building on the horizon. Unless Max gets some help, it will rain before he can bring in the harvest. The grain that he has not harvested will spoil. So Max asks Lyn, his neighbour, whose crop is not yet ripe, if she will help him to harvest his crop. In return, he offers to help her when her crop is ready. Max will be better off if Lyn agrees to help him. But will Lyn be better off if she helps? She will, if this means that Max will help her, because she often also has trouble getting her harvest in before it rains. However, can she rely on Max's promise to help her? How does she know that, after she has helped him to harvest his crop, he will not stand by and laugh when she asks him for help? Lynn correctly thinks it is unlikely that Max will behave this way. Maybe he is not a man of his word, but he is not stupid; he knows very well that if he lies his neighbour now he will never get help in the years to come. Therefore, over the long run, it is in Max's best interest to keep his promise, to be sure he can count on Lynn's help when, very likely, he will need it in the future. Playing

the game several times puts each player in a new situation: they both know the previous moves of the other player, making decisions based on that knowledge. Of course, surprises are possible and any decision involves a certain degree of chance, but this can estimate with more precision.

As Singer points out, “it is easy to see the parallel between the ‘Prisoner’s Dilemma’ and what we might call the ‘Peasant’s Dilemma.’ They are both versions of a common problem, the Co-operator’s Dilemma.”⁹ Yet there is also a crucial difference between the two versions. The Prisoner’s Dilemma is an once-in-a-lifetime situation. You and the other prisoner must each decide, just once, whether to cooperate with the other prisoner or not to do so. Presumably, you and the other prisoner will never be in that position again. In that respect, the answer you give to the interrogator in your cell will have no further effects on your life, other than those that the interrogator has spelled out for you. Max and Lyn, on the other hand, are neighbours and are likely to remain neighbours all of their lives. As predictably as the seasons themselves, they will need help for bringing in their harvest, not only this year, but for many years to come. This provides a vital additional factor for each of them to take into account when they work out what is in their own interests. Now Max knows that if Lyn helps him, and he does not return the favour, she will surely refuse to help him the next year and probably for many years to come. While Max may get a short-term benefit from the weeding he can do instead of helping Lyn, over the long run he will be much worse off. Therefore, it will be in his interest to help Lyn; and Lyn, knowing that this will be the case, will also know that it is in her interest to help Max. Thus, the logic of the Co-operator’s Dilemma is dramatically different when it is going to repeat indefinitely, instead of being a one-off situation.

Unlike the simple game, which is rather predictable in that "compete" is the only rational strategy, the iterated version offers plenty of strategic scope. In the simple game, there are only two possible strategies, "cooperate" and "compete." Iteration, however, allows lots of conceivable strategies, and it is by no means obvious which one is best.

"Tit for Tat"

Clearly, the strategies available in the iterated game are limited only by our ingenuity. Can we work out which is best? This was the question Robert Axelrod, an American social theorist, tried to answer, making a remarkable discovery about the nature of cooperation. He thought of the Prisoner's Dilemma as a game, in which the aim is to spend the least possible time in gaol – or, in other versions, to gain the largest possible sum of money or number of points. To make this work, he set up a round-robin tournament, with many different players. Each player must play the game 200 times with one player. Each game involves deciding whether to cooperate with the other player, by keeping silent, or to defect, and confess. How many years you spend in gaol by consequence of that decision depends on what the other player does, in accordance with the offer made to you by the police, as in the story above. The difference is that having done this once, you do it again, and so on. Each time that you do it, the situation is different, because you know what your opponent did before. Once you have played your 200 games with one player, you move to the next, and so on, until everyone has played the required number of games with everyone else. At the end, we add up the total number of years each player has spent in gaol.

We can think of a variety of possible strategies that you might adopt in order to win the tournament. For example, you might

always keep silent. We could call that strategy “Always Cooperate.” Or you might adopt the extremely selfish strategy “Never Cooperate.” You might try a more complicated strategy, say, cooperating for the first ten games, but not cooperating after that. You might also devise a strategy that is sensitive to what your opponent does: for example, co-operate only if the other player has cooperated in the previous game. Axelrod wanted to know if one strategy would generally do better than any other strategy. If it did, maybe it would also be useful in real-life situations, in which we, or our governments, must decide whether to cooperate or not with others who may or may not cooperate themselves. Accordingly, he announced a Prisoner’s Dilemma tournament, along the lines just sketched.

Axelrod redefined the game in the following terms: Each player can choose one out of two moves – “cooperate” or “defect.” Instead of years of prison, the opponents get a certain number of points, awarded according to the following scheme: “Mutual cooperation,” 3 points; “Temptation to defect,” 5 points; “Punishment for mutual defection,” 1 point; “Sucker’s payoff,” 0 points (see Figure 2 below).

Invitations were sent to people carrying out research in areas related to strategies for making decisions. The invitation set out the rules of the competition, and asked entrants to submit, in a form that could be run on a computer, the strategy that they thought would win.

Fourteen entries came in, some of them quite elaborate. The computer pitted them all against each other. The winner turned out to be the shortest and simplest strategy submitted. It went like this:

1. On the first move, cooperate.
2. On every subsequent move, do whatever the other player did on his or her previous move.

Figure 2 Axelrod's computer tournament: payoffs from various outcomes

		Player A	
		Cooperate	Defect
Player B	Cooperate	Fairly good REWARD for mutual cooperation 3 points	Very bad SUCKER'S PAYOFF 0 points
	Defect	Very good TEMPTATION to defect 5 points	Fairly bad PUNISHMENT for mutual defection 1 point

Submitted by Anatol Rapoport, a well-known psychologist and games theorist from Toronto, this strategy named “Tit for Tat,” because it paid the other players back for what they did. If they were nice and cooperated, it cooperated. If they were selfish, uncooperative response back on the next turn.

That such a childish strategy should win must have caused some discomfort to the many experts who had spent a long time devising much more sophisticated and complicated strategies. Axelrod decided to hold a second, larger tournament, to see if any entrant, knowing that “Tit for Tat” would enter again, and knowing how well it had done previously, could come up with a better strategy. This time sixty-two entries were received. The tournament was run. “Tit for Tat” won again.

Why did “Tit for Tat” do so well? One reason is that it is what Axelrod calls a “nice” strategy: by this, he means a strategy that is

never the first to try to act in an uncooperative way. Despite being nice, “Tit for Tat” actually does better than “mean” strategies, which are the first to be selfish. This is not only true for “Tit for Tat”; in general, in Axelrod’s tournament, nice strategies did far better than strategies that were not nice.

This leads to a significant discovery about the role that unselfish behaviour can play in enhancing one’s prospects of surviving and leaving descendants. Axelrod shows precisely why beings who act in an unselfish manner can do as well as, or even better than, those who behave completely selfishly. There are three key findings.

1. In doing better for itself, “Tit for Tat” also helps all other nice strategies to do better. In other words, the total number of years spent in gaol by “Tit for Tat” and other nice strategies against which “Tit for Tat” plays will be the minimum possible, because these strategies will all begin by cooperating, and will continue to do so. In general, nice strategies support each other.

2. In sharp contrast to nice strategies, mean strategies spoil each other’s chances of success when they play against each other. Mean strategies playing against each other all end up doing very badly.

3. When nice and mean strategies match against each other, nice strategies will do well as long as they are provoked to retaliate by the first selfish action of another.

These strategic games have found many fascinating applications in evolutionary biology¹⁰, but they are also extremely significant for our issue. Narrow-minded egoism is to reject in business, as well as in the evolutionary competition, because – if generalized – it proves to be a self-destructive strategy for all the competitors. However, rejecting plain egoism or selfishness does not mean to assert as valid plain altruism – which most people

associate with morality. "Tit for Tat" goes well because it is a "nice" strategy, always ready to cooperate; but "nice" does not mean "weak": "Tit for Tat" is always ready to retaliate if a "mean" opponent tries to defect. So, what a businessperson should do if she is to act rationally?

Enlightened self-interest

Rejecting narrow-minded egoism or selfishness as irrational from the standpoint of the personal interest, both Hobbes and the Game Theory support the so-called enlightened self-interest: one should care about others, because cooperation and reciprocity is much more profitable than a generalized conflict among all the people. A long-term winning strategy cannot base on a permanent aggressive attitude, ready to squeeze out of any situation maximum of benefits, causing extreme damages to the other competitors; it consists of a clever combination between readiness to cooperate for mutual benefit and the ability to retaliate when the competitors decide to play rough. Narrow minded egoism, guided by a constantly aggressive strategy, seeking to get as often as possible a win-lose situation, may be occasionally and on short term a winning strategy; yet over the long run it leads inevitably to failure, since it permanently creates enemies who, sooner or later, will retaliate, breaking down the aggressor. Therefore, narrow minded egoism can and should be rejected not only because it is unethical – some people do not see anything immoral in serving their own interests, by any available means, even against the legitimate needs and rights of the other people. Plain selfishness should be denied because is a stupid and irrational strategy, that on long term turns out to be always self-destructive. On the contrary, enlightened self-interest seeks to get and keep as long as possible a win-win situation, making all the players to obtain something, and this

strategy consolidates stable relations of cooperation, more or less profitable for everybody. “The most important lesson of the Prisoner’s Dilemma, then, is that when people deal with each other repeatedly so that each can later retaliate against or reward the other party, cooperation is more advantageous than continuously trying to take advantage of the other party.”¹¹

However, ultimately the motive of altruistic behaviour is some sort of pragmatic realism, concerned with the maximum good that a rational individual could obtain. Asked by *BusinessWeek* editor Eric Wahlgren, “Why should companies or employees worry about doing things ethically?” Michael Rion gives an answer that summarises the view of enlightened egoism:

All of us would like to act at work the way we act in the rest of our lives. Assuming that you want to act ethically, you’d like to be able to live out your decisions on the job in a consistent way. So you don’t want the company to put you at odds with that. There’s also job security. If you do certain things wrong in a company, you can get fired or you can go to jail. So, there’s some self-protection there as well.

The same thing applies to the company. There’s a reason it would want people to be ethical – to keep it out of trouble. It won’t have scandals. It won’t have lawsuits. That will be good for business. If you align people with shared values in the company, they’re going to be more productive. If you treat customers fairly, they’re likely to be loyal, and so on. So, in addition to being the right thing to do, being ethical contributes to business success.¹²

Elaine Sternberg emphasizes the negative consequences or the costs of being unethical in business:

One measure of the value of business ethics to business is the damage which a lack of it can cause. And the lack of business ethics can cost dear. Failure to recognise and address ethical problems can lead to very substantial charges, both legal and monetary; being unethical can cost a business its very life. Many of the most dramatic business failures and the most significant business losses of the last decade have been the result of unethical conduct. In almost all cases, ‘bad ethics is bad

business'; the short-term gains which may be won by unethical conduct seldom pay in the end.

A business which ignores the demands of business ethics, or gets them wrong, is unlikely to maximise long-term owner value. The business that characteristically lies or cheats or steals, or break promises, is difficult and unrewarding to deal with. The business that treats its customers contemptuously, or its staff unjustly, or its suppliers dishonestly, will often find them hard to retain. In a free market, the most productive staff, the finest suppliers and the cheapest and most flexible sources of finance can do better than to stay with a business that cheats or treats them unfairly. And discerning customers are unlikely to be loyal to a business that offers dangerous or unreliable products or grudging, unhelpful service. In the long run, unethical business is less likely to succeed.¹³

Applying these strategic principles, derived from the analysis of certain logical games in the realm of business, most of the authors emphasize the requirement of ethical behaviour in economic relationships. One economic agent should respect the legitimate interests and rights of different categories of players of the economic game, since both abstract theory and real life practice prove that over the long run this fair treatment of the others promises to bring forth the best results. "What the Prisoner's Dilemma argument shows is that even those who have no concern for the welfare of others – even self-interested individualists – still have a good reason to bring ethics into their business dealings."¹⁴ In other words, sometimes it is smarter not to take the bishop and enjoy a small, temporary advantage, compromising irreversibly your position on the chessboard; a shrewd player will sometimes sacrifice his rook or even his queen if this is the best way to win the game.

Plenty of normative consequences can extract from these premises. It is not good to disregard your consumers, misleading them by dirty tricks to pay a lot of money for a lousy, hazardous, and unreliable product. Sometimes, this policy can pay on short

term, but, sooner or later, the customers will realize they have been duped and they will stop buying your merchandise, putting your company out of business. On the contrary, one should do any effort and sacrifice to protect the company's reputation and consumers' loyalty. The employees should be well treated, fairly paid, offered a safe and friendly work environment, and stimulated to find a full meaning and an intrinsic satisfaction in their activities. Otherwise, the valuable employees will leave, attracted by the competitors who offer them better contracts. The same line of reason applies to the fair treatment of serious suppliers, local communities, natural environment, etc. In short, ethical treatment of all categories of stakeholders works over the long run for the benefit of a competitive company, and the apparent losses that ethical behaviour in business can bring forth are, in effect, real investments in good reputation and positive public image – factors that become more and more competitive advantages. In Boatright's cynical expression,

businesses are economic organizations that operate within a framework of law. They are organized primarily to provide goods and services, as well as jobs, and their success depends on efficient operation. On this view, it may be helpful and even essential to observe certain ethical standards, but doing so is merely a means to the end of profit making.¹⁵

Apparently, we got a rigorous and objective proof of the basic principle of business ethics: "Good ethics is good business". On second thought, we might find out that the whole argument is inconclusive. On the one hand, caring about the interests and rights of the stakeholders is not, in effect, the logical conclusion of the premises established by game theory. On the other hand, most ethical theories would deny that enlightened self-interest could stand as a valid pattern of ethical behaviour.

The paradoxical cooperation between the competitors

Surprisingly enough, those who appeal to the game theory to prove the rationality of ethical behaviour in business fail to see that all these logical calculations of enlightened self-interest lead to one main conclusion: the best strategy for shrewd competitors on the market is to *cooperate* for mutual benefits instead of trying to destroy each other. In other words, as Hobbes taught us a long time ago, the war of everybody against all the rest is a self-destructive strategy. Instead of competing against the other players, trying to attract the consumers through better offers, the companies would make larger and safer profits over the long run by secretly sharing the market and making an agreement to control costs, prices, and production, so that to keep a favourable ratio between offer and demand. Taking this viewpoint, the common enemy of all companies are the consumers, the employees, the suppliers, local communities, the state – in a word, different categories of stakeholders. Cynically, but logically one business leader said, “We believe the competitor is our friend and the customer is our enemy. [...] We should be trusting,” he added, “and have competitive friendliness among the companies.”¹⁶ The next case is a perfect illustration.

ARCHER DANIELS MIDLAND AND THE FRIENDLY COMPETITORS

By 1995, Archer Daniels Midland Company (ADM) had become one of the world's largest agricultural companies. ADM processes corn, wheat, soybeans, peanuts and other oilseeds to make products used by the food, beverage, and chemical industries. Its global sales in 1994 were about \$13 billion. Since 1966, the company had been headed by Dwayne Andreas, a hard-driving executive who pushed the company toward greater productivity and rapid expansion. Dwayne brought in his son,

Michael D. Andreas, who became the company's executive vice president of sales and marketing.

In early 1989, Dwayne and Michael Andreas decided that ADM should enter the lysine business. Lysine is an amino acid derived from corn that is used as an additive in animal feed because it promotes the growth of lean muscle. Lysine is an undifferentiated commodity and buyers tend to be price-sensitive. In 1989, the world market was dominated by three companies: Ajinomoto (a Japanese company), Kyowa (also Japanese), and Miwon (a Korean company). Cheil (a Korean company) would enter the market in 1991 at the same time as ADM.

To manage ADM's entry into the lysine business, Dwayne Andreas and his son, Michael, hired an extremely bright and energetic young man named Mark Whitacre. Mark Whitacre would run ADM's lysine business and would report to Michael Andreas. Only 32 years old, Whitacre had a BS and an MS in animal science from Ohio State University, had earned a Ph.D. in nutritional biochemistry at Cornell University, and had worked 5 years for Degussa, a German chemical company. Married to Ginger Gilbert, his girlfriend at the high school where he had been senior class president, Mark Whitacre now became president of ADM's new lysine division. Whitacre thrived at ADM, where he enjoyed the absence of bureaucracy and the dynamic and quick moving "can-do" company culture. Said he, "For the first few years I loved working at the company. I was very proud of ADM and how it operated. I was very enthusiastic about my work, very excited."

ADM started building its new \$100 million lysine production plant in September 1989 and finished in February 1991, a surprisingly short period of 17 months. Capable of producing 250 million tons of lysine a year (enough to supply half of the worldwide demand), the new plant was the largest in the world. Whitacre hired the best people from around the world to work for him in ADM's new lysine business.

When ADM began selling lysine, it was selling for \$1.30 a pound. ADM's large new plant, however, brought a huge volume of new product into the market, and prices quickly began to fall. ADM believed that in order to get customers to buy from a newcomer, the company had to price its product below established competitors. The result was a disastrous and costly price war among the five companies in the industry. "When we started selling," said Whitacre, "prices started falling, and there was a tremendous price war. Lysine went from about

\$1.30 a pound down to about 60 cents a pound. At that point we were losing money, a few million dollars a month."

ADM was in fact losing about \$7 million a month. Managers at all five lysine-producing companies – all of whom were also losing money – felt the devastating situation could not continue. Something had to be done. At ADM a method of dealing with such situations had been developed. Terry Wilson, president of ADM's Corn Processing Division, had introduced this "method" to other divisions in ADM, and Michael Andreas now asked Mark Whitacre to work with Terry Wilson.

"It was during my first year or so at the company that I started hearing about price fixing at ADM – in four or five other divisions. People said it was fairly common. ... Around February 1992 ... they told me that they wanted me to work closer with Terry Wilson ... I should look to Terry as a mentor, someone to teach me some things about how ADM does business."

Terry Wilson had some initial discussions with Whitacre and then proposed that he and Whitacre meet with top managers of the other four companies producing lysine. A meeting was arranged, and on June 1992, Wilson and Whitacre met in a Mexico City hotel with the managers of Ajinomoto and Kyowa, the two Japanese producers of lysine. Absent from the meeting were the two Korean companies, Miwon and Cheil. Among them, however, ADM, Ajinomoto, and Kyowa controlled most of the world's lysine market.

During the June 1992 Mexico City meeting, Terry Wilson stood in front of a flip chart and asked the representatives of the companies how many million pounds of lysine each of them produced in a year in their plants. He wrote the quantities on the flip chart and added them together, including estimates for the two Korean companies. Wilson then turned the page over. He now asked the group for their estimates of how many million pounds of lysine were actually purchased each year in Europe, Latin America, Asia, and the US. He wrote these down and added them together on a second page. Finally, he compared the amounts on the two pages and pointed to "our problem": The total amount they were producing was 25% more than the total amount of worldwide demand. Wilson next multiplied their estimates of worldwide demand by 60 cents, the current price of a pound of lysine. He also multiplied their estimate of worldwide demand by \$1.30, the price before ADM entered the market. The difference was \$200 million. Wilson declared that \$200 million was the amount that the five

companies were giving away to their customers. This meant, he continued, that the benefits were going to their customers, not to the five companies who had each spent hundreds of millions of dollars building their plants. At ADM, he said, "We believe the competitor is our friend and the customer is our enemy." "We should be trusting," he added, "and have competitive friendliness" among the companies.

Wilson, Whitacre, and the representatives of the two Japanese companies now turned to discussing a "target" price at which the companies could sell "if we stop the competition." The purpose of their meeting, it was noted, was to end the price war among them that had driven prices downward. Their aim could be achieved, however, only if all five companies agreed to sell lysine at the same price, without undercutting each other. The Japanese companies therefore volunteered to contact the two absent Korean companies and talk them into coming on board and joining their agreement. The representatives of Ajinomoto summed up the agreement: "if the discussions go smoothly, we will aim for prices at the level of \$1.05/lb for North America and Europe...by October, and \$1.20/lb in December." Wilson suggested that to hide the real purpose of any future meetings among them, they should form a "trade association" that would meet periodically with a fake public agenda. This, he said, was how ADM had gone about arranging secret price-fixing meetings for other commodities the company produced.

After the meeting, ADM gradually raised its prices as agreed, and so did the other four companies. The Koreans had evidently been talked to into joining the agreement. In the US, the price of lysine rose to \$1.05/lb by the end of the summer of 1992. For a while, it looked like the price wars had ended. [2002]

The five companies now agreed to meet in Paris in October 1992 to launch the newly formed "International Amino Acid Producers Association." They published a fake agenda stating that they would discuss animal rights and other environmental concerns. Those topics were never discussed. Instead, the companies spent their meeting time congratulating themselves on the success of their earlier agreement and working to reach a new agreement on future prices for each region of the world where they sold lysine.

After the Paris meeting, however, problems emerged. Instead of rising, the price of lysine stayed at \$1.05 through the end of 1992, and then began to gradually decline. The price fell through January, February, and March of 1993, and reached 70 cents by April. In April,

Michael Andreas, Terry Wilson, and Mark Whitacre urgently met with officials of Ajinomoto in Decatur and Chicago to discuss the deteriorating situation. The problem, Andreas and Wilson explained, was that the five companies had not agreed to limit their production volumes. In the absence of any volume agreement "from the supply side", each of the companies had tried to produce and sell as much lysine as it could. Together they flooded the market with more product than was being demanded, and so they couldn't hold their price agreements. The only way to bring "stability" to the market was by controlling volume on the supply side. Unless volume is controlled, Wilson noted, "prices go down."

With price still falling, ADM and Ajinomoto officials met in Tokyo on May 14, 1993, to discuss limiting the amount they were producing in order to improve prices. At the meeting, Wilson explained that in other markets ADM had met with competitors and each competitor had agreed to sell only a specific amount of the product to ensure that their cumulative supply did not outstrip demand. Once specific volumes are allocated to each company, he pointed out, there is no need to even monitor prices because "as long as the volume [of each company] turns out okay, if they want to sell [their assigned volume] for less money, that's their business."

An agreement to limit the volume of lysine each company could sell, however, would require an agreement among all five companies. By now, the price of lysine had dropped to 60 cents a pound, and all the companies were losing money. The five companies therefore met on June 24, 1993 in Vancouver, Canada. There, they again reached an agreement on prices but quarreled over accepting restrictions on the amount they could sell because, one of them later noted, "everybody wanted a bigger share." They agreed, however, to, at least, hold their current levels of production and to raise their prices together to the newly agreed levels.

After the Vancouver meeting, the companies breathed a sigh of relief as they watched prices gradually move upward in tune with their agreement. Their experience, however, had convinced them that they had to agree on a volume allocation if they were to hold the line on prices. On October 25, 1993, therefore, Andreas, Wilson, and Whitacre of ADM met with the officials of Ajinomoto in Irvine, California, to hammer out a volume agreement. The representatives of the two companies agreed that in 1994 each company would limit itself to

selling the same quantity it had sold in 1993, plus a certain amount of the quantity by which they estimated the industry will grow in 1994. If they did not stick to this agreement to limit their volumes, Michael Andreas warned, then ADM would use its huge lysine capacity to again flood the market and drive down prices for everyone and “there becomes a free-for-all.”

On December 8, 1993, representatives of ADM, Ajinomoto, Kyowa, and Miwon met in Tokyo; Cheil was not represented at the meeting. In Tokyo the companies agreed on prices for the coming quarter. More importantly, they finally also agreed to a schedule indicating the amount of lysine (in tons) that each could sell in each region of the world. They also agreed on a method of ensuring that none of them would be tempted to sell more than they were allowed to sell. If a company sold more than its allocated share, then at the end of the year, it would have to make amends by buying that amount of lysine from another company that had sold less than its allocated share. Moreover, every month each company would send a report to an official at Ajinomoto indicating the amount of lysine it had sold the previous month. These reports would be audited and Ajinomoto would distribute the reports to the other companies.

A few months later, on March 10, 1994, the companies met in Hawaii where Cheil joined the group and also agreed to limit its sales volume to a specified amount. Now at last all five companies had succeeded in reaching an agreement to set both their prices and their production volumes.

Representatives of ADM, including Whitacre and, periodically, Wilson and Andreas, continued to meet once a quarter with top managers of Ajinomoto, Kyowa, Miwon, and Cheil for the rest of 1994 and through the first half of 1995. Lysine prices from December 1993 until April 1995 remained at about \$1.20 per pound in accordance with the agreements the companies had hammered out.

The agreement ended abruptly on June 27, 1995 when FBI officials raided the offices of ADM and questioned Michael Andreas at his home about price-fixing in the lysine market. Andreas said that it was impossible to fix prices in the lysine industry and denied that ADM had ever exchanged price or production information with competitors. A few days later, however, the FBI revealed that in November 1992 they had convinced Mark Whitacre to become an FBI informer. Subsequently, when Whitacre attended price-fixing discussions, he had

carried hidden audio or video recorders that had recorded the various meetings among Andreas, Wilson, and the managers of Ajinomoto, Kyowa, Miwon, and Cheil. They had been caught on tape.

A month later came another surprise. It was revealed that while Whitacre was recording the price-fixing discussions between ADM and the competitors, he had secretly been taking money from ADM. Altogether he had taken \$2.5 million from the company. Whitacre claimed that this was a "bonus" and that the company often let its executives pay themselves such bonuses under the table to avoid taxes.

Based on the tapes that Whitacre turned over to the FBI, ADM was indicted as a company for price-fixing and fined \$100 million. On July 9, 1999, Andreas and Wilson were each fined \$350,000 and given 20-month prison sentences for price-fixing, a sentence the court reaffirmed on June 26, 2000. Whitacre, whose act of taking money from ADM nullified the immunity agreement he had worked out with the FBI, was sentenced to 9 years in prison for embezzlement, plus 20 months for price-fixing and forced to return the money he took. The managers of the Korean and Japanese companies that participated in the price-fixing meetings were fined \$75,000 each but were granted immunity from serving time in prison in exchange for agreeing to testify against ADM and its executives. On July 6, 2000, the EU fined ADM \$46 million for fixing lysine prices in Europe.¹⁷

Unfortunately, this is not an isolate case. On the contrary, price fixing is a common practice, which could hardly deny from the perspective of game theory, because it is "rational" from the standpoint of the competitors; however, this sort of dirty cooperation between companies expected to compete, for the benefit of the consumers, is both illegal and unethical. The next case seems to be a copy of the previous one.

FIXING THE COMPUTER MEMORY MARKET

All personal computers need memory chips, called DRAM for "dynamic random access memory", which were often sold in 128-Mb units. The \$20 billion per year DRAM market is dominated by Micron,

Infineon, Samsung, Hynix, and a few smaller companies who sell their DRAM to computer makers such as Dell, Compaq, Gateway, and Apple. In the late 1990s, the DRAM makers invested in bigger factories leading to a market glut, large inventories, and intense price competition. By February 2001, unsold inventories and a recession took DRAM prices into a steep fall [from \$6 to around \$1.5 per unit], dropping to about \$1 a unit by the end of 2001, a price well below manufacturing costs. In early 2002, while inventories were still high and the recession was in full swing, prices strangely rose and peaked at about \$4.50 a unit in April. That month, Michael Dell of Dell Computers accused the companies of “cartel-like behavior”, and the Department of Justice (DOJ) began to investigate the possibility of price-fixing. Prices now reversed, falling to \$2 by the end of 2002, about 20-40% below manufacturing costs. The DOJ later released a November 26, 2001 e-mail written by Kathy Radford, a Micron manager, in which she described plans by Micron, Infineon, and Samsung to move their prices upward in unison: “the consensus from all [DRAM] suppliers is that if Micron makes the move, all of them will do the same and make it stick.” On September 2004, Infineon pled guilty to “participating in meetings, conversations, and communications” with other DRAM makers during 2001 and “agreeing during those meetings, conversations, and communications” to “fix the prices for DRAM.” Infineon paid the US government \$160 million in fines. The DOJ announced it was investigating the other DRAM makers.¹⁸

No doubt, this approach is morally wrong and even the “friendly competitors” realize that – not after getting a deeper understanding of the game theory, but according to certain ethical values and principles that essentially contradict the rational strategies suggested by the doctrine of enlightened self-interest. Why, then, do the preachers of enlightened self-interest tell us that, according to game theory, one should find the right balance between competition and cooperation? That “good ethics is good business”? I think their logic is correct only insofar they limit the scope of their analysis, applying a “rational” strategy at the micro

level of *one* company, plus its network of directly involved stakeholder groups. From this narrow perspective, an intelligent business leader can easily understand that, on the long run, it is more profitable for the company to treat ethically right the consumers, the employees, the suppliers, etc. – in short, to emphasize cooperation between managers and stakeholder groups. Conclusions radically change at the macro level of a whole market, industry, or social system.

An analogy with sport games might be suggestive. When applied to, say, a single soccer or football team, the theory recommends perfect synchronicity and cooperation between coach and players, between team mates, between the team and its fans, all of these factors contributing to success. Yet, ideally, the final goal of each team is to win the championship, and that requires winning as many games as possible, beating the competing teams. Well, taking the large picture, game theory suggests it might be more efficient if all the teams set up in advance their games, making secret agreements, that ensure for each team a certain number of points, minimizes costs with valuable players and coaches, and can bring in a lot of money, by cheating the fans with faked dramatic, spectacular games.

Yet this simple description ignores a very important fact: the audience is somehow part of the game. As the fans realize that what they watch is a farce, they will lose their interest in the competition, leading the whole championship and all the teams to bankruptcy. It goes like this also in the economic competition – which, in fact, is not just a game, but a system of vital activities for all the people involved. Employees, suppliers, and consumers are not mere spectators or inanimate pieces on a chessboard, but essential actors of all business activities. Perceiving some serious breaches of market economy rules determines these large stakeholders groups to strongly disapprove of such unfair practices and oppose this cooperation between competitors, since it breaks the “social contract”, which protects the property rights and allows

the investors to do profitable business, but on one condition: their profit should correlate with certain services to the community. In a democracy, the unprivileged groups, ripped off by a fake competition, will determine the authorities to adopt legislation that forbids and severely sanctions any kind of cooperation between competitors. The employees have their weapons to protect and promote their rights: strikes, protests, trade unions; consumers can sanction these unfair practices through the strong weapon of boycott, directed against the unethical companies. To sum up, cooperation between competitors could be rational only as long as the reward is to share exclusively among the players, leaving aside other parties who have some invested interest in the competition, expecting a benefit of their own that supposes an honest competition between the main actors of the game. Insofar as the game affects, one way or another, more than the interests of the players the conclusions drawn from the game theory lose their practical relevance and, equally, any ethical legitimacy. If we enlarge the perspective, considering a large number of variables, then game theory would lead to different conclusions and suggestions. It will prove that any temptation of the competitors to falsify their competition will be beneficial for the players only on very short term; over the long run, nevertheless, the replacement of real competition with mutually beneficial cooperation between the main actors will turn out self-destructive, leading to the bankruptcy of the whole market and terrible losses for everyone.

The only way game theory can introduce in its calculations, beside the leading players – investors and managers – the other stakeholder groups implies (most often implicitly) the assumption of a debatable premise: namely, that *all* of the participants in the economic game are *self-interested individuals*, competing each other in many respects. For example, each employee competes against the other employees, for getting and keeping a well paid job; the whole mass of employees compete against the management, each party seeking to obtain the best deals – low

costs of labour, from the viewpoint of employers, high salaries, safety and stability of jobs, from the viewpoint of the work force. Consumers (in effect, the same people above mentioned, but playing a different role in the economic process) compete each other, seeking the best transactions (promotions, sales, special prices, etc.); they also compete against the producers and distributors, who wish to sell at high prices, whereas the customers seek to buy as cheap as possible, etc. Willy-nilly, this premise supposes a concept that is philosophically vulnerable to harsh criticism, carrying a heavy ideological component: *homo oeconomicus*, supposed to be the solipsistic individual, motivated exclusively by personal self-interest, best served by a strictly rational approach of life, leaving aside every ethical standard, except the legal rules of the game. Only if one takes for granted the notion that each "player" of the economic game is competing against everyone else, game theory could get a general relevance, able to justify rationally the requirement of cooperation between the individual members of stakeholder groups and, further, the requirement of cooperation of these groups in their relationships. Unfortunately, the notion of *homo oeconomicus* is far from being a positive concept, invulnerable to criticism and beyond any ideological commitment. Consequently, that "pure rationality" dreamed of by those theorists who seek to build a solid business ethics on the foundation of game theory and enlightened self-interest keeps on being out of rich.

Boatright shows with an empirical argument that "strictly rational" behaviour, ignoring any ethical standard, except the pursuing of self-interest, is a fictitious, hypothetical invention:

People are also motivated in their market behaviour by considerations of fairness. This is illustrated by the "ultimatum bargaining game", in which two people are given a certain amount of money (say \$10) on the condition that one person proposes how the money is to be divided (for example, \$5 to each) and the second person accepts or rejects the proposed

division. The first person can make only one proposal, and if the proposal is rejected by the second person, the money is taken away and each person receives nothing. Economic theory suggests that the second person would accept any proposal, no matter how small the share, if the alternative is no money at all. Hence, the first person could offer to share as little as \$1 or less. But many people who play the game will refuse a proposal in which they receive a share that is considered too small and hence unfair.¹⁹

Is “enlightened self-interest” really a moral approach of business?

Supposing that, after a more complex and subtle analysis, game theory could prove the rationality of ethical behaviour in business, there is still an important issue to discuss. Not all of the major ethical theories agree that doing good to your neighbour motivated by self-interest is a morally valid behaviour. On the contrary, most of the ethical theories deny this notion with strong arguments.

From the viewpoint of Kantian *duty ethics*, the motive of an act makes the act ethically worthy of praise or blame. No matter the consequences, if one respects the interests and rights of the other people *only* for the sake of maximizing his own benefits over the long run, the agent does not act ethically. From a Kantian perspective, “enlightened” or not selfish motivation is incompatible with morality. Ethical behaviour demands the agent to act in accordance to the categorical imperative; in other words, the sole motive of one’s actions should be the will to do his or her duty. As long as businesspeople seek to treat fairly the consumers, the employees, the suppliers, etc. only insofar rational analysis proves this fair treatment promises to maximize their own profit over the long run, they do not act ethically; they merely apply an intelligent, shrewd, and effective strategy – like the skilful chess player who

sacrifices a rook to win the game. How could be the categorical imperative compatible with the "supreme law" of business activity, as stated by Michelman?

Once the firm enters the competition, it must abide by the rules of that competition. And all these rules are comprehended by the single Rule: Let the maxim of your action be that which advances the profitability of your firm.²⁰

The so-called *ethics of rights*, initiated by Adam Smith, John Locke or Jean-Jacques Rousseau – in many respects similar to Kantian duty ethics – also denies the morality of self-interest. Reading Adam Smith's *Wealth of Nations*, some people are charmed by the "invisible hand" of an ideal free market, insofar as the pursuing by the individuals of their self-interest leads to the most efficient and productive satisfaction of the general good. However, they forget Smith's paper on moral sentiment, where he claims that market cannot produce its socially desirable effects if it does not ground on certain fundamental moral beliefs and principles.²¹ Ignoring these ethical standards would lead to Hobbes's universal war, with catastrophic consequences for everyone. From this perspective, for instance, the right of consumers to be protected against monopolistic practices, advertising manipulation and mischievous marketing tactics, against price gauging and unsafe products should be respected unconditionally, and not merely insofar respecting these rights could prove beneficial to the companies on long term.

Nor *virtue ethics*, inspired by the Aristotelian moral philosophy, would recognize the ethical value of enlightened self-interest. Less preoccupied with individual acts, virtue ethics focuses on the harmony and nobleness of character. Therefore, Aristotelian ethics also rejects selfishness, no matter how rational, as one of the defining traits of a moral person. Self-interest is contrary to generosity, justice, courage, or truthfulness and friendship, the essential virtues, whose constant development

through practice leads to the rise of a firm character, able to follow spontaneously the path of good, incapable of committing wrong deeds. The same Michelson does not hesitate to say, "Virtue, being displaced by rationality, has no place in this competition; and the individual is obliged to make a choice between virtue and money."²² On the contrary, Stephen Young thinks that, "a solution to this generalized moral degradation in business environment is to expect from businesspeople some moral character. It is up to the leaders to make ethics work, and character will offer the leaders their direction, as well as the determination to act."²³

The only moral philosophy that might support the moral legitimacy of the strategies suggested by game theory is *utilitarianism* – more precisely Bentham's original utilitarian ethics. From the viewpoint of *case-by-case* utilitarianism, the moral worth of human acts does not depend at all on the agent's motivation; it entirely depends on the beneficial consequences of human actions, according to the famous principle, "the greatest happiness for the greatest number". This is the sole approach that supports self-interest, as long as – assuming a selfish motivation of *all* players of the economic game, including employees, consumers, suppliers, etc. – all of these participants get maximized benefits with minimal costs. Yet not even classical utilitarianism would recognize the morality of a cooperative coalition of the competitors against different stakeholder groups, since such a pervert cooperation would be beneficial exclusively to the minority of unscrupulous investors and managers, but obviously detrimental to the consistent majority of those social categories that appear as losers of the game.

We must go further. Up to this point, we have rejected plain egoism or selfishness as an irrational standpoint, and we have cast a doubt over the enlightened egoism in business, as a questionable point of view – even though we have not yet concluded if it is a tenable ethical position or not. Up to this point, we have mentioned nothing but negative grounds for the idea that a rational

businessperson has certain moral responsibilities and must commit to a whole range of ethical obligations. But can we find some positive grounds of this idea? Yes, we can, and they are even more important than the negative grounds, which matters only from the viewpoint of self-interest.

The cooperative nature of business

The positive grounds of obligation for a businessperson arise from the nature of business. Contrary to common-sense perceptions of business as tough and merciless competition, business is fundamentally a cooperative activity. Business transactions would not take place unless there were fruits of cooperation that could benefit both parties. Business transactions are essentially two-sided, with both parties benefiting as the result of the transaction. Cooperation, not competition is the most fundamental aspect of business, and though competition remains important, the cooperative setting constitutes grounds for many obligations that a businessperson should recognise. According to Griffiths and Lucas, "cooperativeness is not a matter of pure altruistic benevolence: the un-cooperative man loses by virtue of being a loner, and though he may sometimes succeed in trading on other men's good nature, he deprives himself of the fruits of cooperative action, and confines himself to the little he can achieve by his own unaided efforts."²⁴

Moreover, the cooperation is normally long term and wide-ranging; the one-off transaction is the exception rather than the rule. Business is typically a process continuing over time and set within a definite social system of mutual understanding. I sell to customers who are in the habit of buying the sort of goods I sell, and buy from suppliers, who make their living by regularly and reliably supplying goods or services to those who want them. The obligations of a businessperson arise from the cooperative nature of business, and the shared values and mutual understanding

of the cooperative associations within which business transactions take place.

In many cases, the cooperative setting is obvious. It is only because shareholders, superiors, colleagues, and employees cooperate with him that a businessperson is able to do business, and the shared values on which that cooperation bases constitute considerations he should have in mind when reaching his decisions. Exactly what duties he has to shareholders, superiors, colleagues, and employees, and, more problematically, how conflicts of duties are to be resolved, it remains to see. However, it is hardly controversial to claim that he does have duties to them, and that these duties arise from their being fellow members of the same business enterprise.

It is, however, controversial to argue that a businessperson has duties also to his customers, suppliers, and even his competitors, for in these cases we are more immediately aware of the adversarial, competitive aspect of the relationship, which seems altogether external. And, indeed, these relationships are more external. There is an adversarial element in bargaining with suppliers or customers, and competitors are competing. Yet bargains cannot take place unless there is some co-operators' surplus to bargain about, and nobody will do business with me in order to make me better off. "I cannot reasonably invite you to do business with me" – say Griffiths and Lucas – "on the grounds of my wanting to make a profit out of you; if I am to invite you to do business with me, it must be on the grounds of its being advantageous to you. I must hold myself out as ready to serve the interests, in some respect, of you and others, in the same way as the doctor holds himself out as serving the medical needs of his patients."²⁵ Only if I hold myself out as meeting the other person's wants or needs will that person want to do business with me, so that if I am a person people want to do business with, I must see myself as others see me, and see to it that my business is good from their point of view. Although I may, for a reason, be successful in

ripping customers off, I cannot construct a coherent account of what I do in those terms alone, as I cannot offer any reason why people should want to do business with me. The role of the businessperson is socially defined in terms of the services he offers to others. These provide the criteria for judging whether he performs his role well or ill, and constitutes grounds for his obligations to those he does business with. My competitors share these, and we collectively may need to uphold standards, and ensure that the public is well served by members of our trade generally. Beyond these shared values, there is the further bond of a common humanity, which enjoins us to recognize other people as fellow human beings. Even where I have no common interest with my customers, suppliers, or competitors, I still need to treat them as persons, each with his own point of view, to whom I have, as a matter of justice, certain obligations of fair dealing and honesty.

All of these considerations lead Griffiths and Lucas to the next conclusion: "Instead of viewing the businessman as a self-interested entrepreneur, a profit maximizer, essentially out for what he can get for Number One, we should view him also as a co-operator, responsive to the two-party nature of business transactions, and ready to meet the other party's wants and needs. The popular view of the businessperson being ruled by the law of the jungle should give way to one that sees him more as a cultivator, who responds creatively to the wants and needs of others, enabling them, as well as himself, to achieve their purposes. He shares values with others and has a rational regard for their point of view, and is not moved by narrow self-interest alone."²⁶

More than abstract logical games, day-to-day practice proves that underestimating cooperation and overemphasizing harsh competition prove, over the long run, a losing strategy. However, the short-term spectacular gains make excessive competitive behaviour in business very attractive. As the next cases show, business competition typically is merciless, which is detrimental

both to a sound business environment and especially to the various stakeholders groups, beginning with the consumers and employees.

BECTON DICKINSON AND NEEDLE STICKS

During the 1990s, the AIDS epidemic posed peculiarly acute dilemmas for health workers. After routinely removing an intravenous system, drawing blood, or delivering an injection to an AIDS patient, nurses could easily stick themselves with the needle they were using. "Rarely a day goes by in any large hospital where a needle stick incident is not reported." In fact, needle stick injuries accounted for about 80% of reported occupational exposures to the AIDS virus among health care workers. Conservatively estimated, in 1991 about 64 health care workers were infected with the AIDS virus each year as, a result of needle stick injuries.

AIDS was not the only risk posed by needle stick injuries. Hepatitis B, hepatitis C, and other lethal diseases were also being contracted through accidental needle sticks. In 1990, the Center for Disease Control (CDC) estimated that at least 12,000 health care workers were annually exposed to blood contaminated with the hepatitis B virus, and of these 250 died. Because the hepatitis C virus had been identified only in 1988, estimates for infection rates of health care workers were still guesswork but were estimated by some observers to be around 9,600 per year. In addition to AIDS, hepatitis B, and hepatitis C, needle stick injuries can also transmit numerous viral, bacterial, fungal, and parasitic infections, as well as toxic drugs or other agents delivered through a syringe and needle. The cost of all such injuries was estimated at \$400 million to \$1 billion a year.

Several agencies stepped in to set guidelines for nurses, including the Occupational Safety and Health Administration (OSHA). On December 6, 1991, OSHA required hospitals and other employers of health workers to (a) make sharp containers (safe needle containers) available to workers, (b) prohibit the practice of recapping needles by holding the cap in one hand and inserting the needle with the other, and (c) provide information and training on needle stick prevention to employees.

The usefulness of these guidelines was disputed. Nurses worked in high-stress emergency- situations, that require quick action, and they were often pressed for time both because of the large number of patients they cared for and the highly variable needs and demands of these patients. In such workplace environments, it was difficult to adhere to the guidelines recommended by the agencies. For example, a high-risk source of needle stick is the technique of replacing the cap on a needle (after it has been used) by holding the cap in one hand and inserting the needle into the cap with the other hand. OSHA guidelines warned against this two-handed technique of recapping and recommended instead that the cap be placed on a surface and the nurse use a one-handed "spearing" technique to replace the cap. However, nurses were often pressed for time and, knowing that carrying an exposed contaminated needle is extremely dangerous, yet seeing no ready surface on which to place the needle cap, they would recap the needle using the two-handed technique.

Several analysts suggested that the nurse's work environment made it unlikely that needle sticks would be prevented through mere guidelines. Dr. Janine Jaegger, an expert on needle stick injuries, argued that "trying to teach health care workers to use a hazardous device safely is the equivalent of trying to teach someone how to drive a defective automobile safely. [...] Until now, the focus has been on the health care worker, with finger wagging at mistakes, rather than focusing on the hazardous product design. [...] We need a whole new array of devices in which safety is an integral part of the design." The Department of Labour and Department of Health and Human Services in a joint advisory agreed that "engineering controls should be used as the primary method to reduce worker exposure to harmful substances."

The risk of contracting life-threatening diseases by the use of needles and syringes in health care settings had been well documented since the early 1980s. Articles in medical journals in 1980 and 1981, for example, reported on the problem of needle stick and puncture wounds among health care workers. [...]

About 70% of all the needles and syringes used by US health care workers were manufactured by Becton Dickinson [BD]. Despite the emerging crisis, BD decided not to change the design of its needles and syringes during the early 1980s. To offer a new design would not only require major engineering, retooling, and marketing investments but would mean offering a new product that would compete with its

flagship product, the standard syringe. According to Robert Stathopoulos, who was an engineer at BD from 1972 to 1986, the company wanted “to minimize the capital outlay” on any new device. During most of the 1980s, therefore, BD opted to do no more than include in each box of needled syringes an insert warning of the danger of needle sticks and of the dangers of two-handed recapping.

On December 23, 1986, the US Patent Office issued patent number 4,631,057 to Norma Sampson, a nurse, and Charles B. Mitchell, an engineer, for a syringe with a tube surrounding the body of the syringe that could be pulled down to cover and protect the needle on the syringe. It was Sampson and Mitchell’s assessment that their invention was the most effective, easily usable, and easily manufactured device capable of protecting users from needle sticks, particularly in “emergency periods or other times of high stress.” Unlike other syringe designs, theirs was shaped and sized like a standard syringe, so nurses already familiar with standard syringe design would have little difficulty adapting to it.

The year after Sampson and Mitchell patented their syringe, BD purchased from them an exclusive license to manufacture it. A few months later, BD began field tests of early models of the syringe using a 3-cc model. Nurses and hospital personnel were enthusiastic when shown the product. However, they warned that if the company priced the product too high, hospitals, with pressures on their budgets rising, could not buy the safety syringes. With concerns about AIDS rising, the company decided to market the product.

In 1988, with the field tests completed, BD had to decide which syringes would be marketed with the protective sleeves. Sleeves could be put on all of the major syringe sizes, including 1-cc, 3-cc, 5-cc, and 10-cc syringes. However, the company decided to market only a 3-cc version of the protective sleeve. The 3-cc syringes accounted for about a half of all syringes used, although the larger sizes – 5/cc and 10-cc syringes – were preferred by nurses when drawing blood.

This 3-cc syringe was marketed in 1988 under the trademarked name *Safety-Lok Syringe* and sold to hospitals and doctors’ offices for between 50 and 75 cents, a price that BD characterized as a “premium” price. By 1991, the company had dropped the price to 26 cents a unit. At the time, a regular syringe without any protective device was priced at 8 cents a unit and cost 4 cents to make. Information about the cost of manufacturing the new safety syringe was proprietary, but an educated

estimate would put the costs of manufacturing each Safety-Lok syringe in 1991 at 13 to 20 cents.

The difference between the price of a standard syringe and the "premium" price of the safety syringe was an obstacle for hospital buyers. To switch to the new safety syringe would increase the hospital's costs for 3-cc syringes by a factor of 3 to 7. An equally important impediment to adoption was the fact that the syringe was available in only 3-cc size, and so, as one study suggested, it had "limited applications." Hospitals are reluctant to adopt, and adapt to, a product that is not available for the whole range of applications the hospital must confront. In particular, hospitals often needed the larger 5-cc and 10-cc sizes to draw blood, and BD had not made these available with a sleeve.

In 1992, a nurse, Maryann Rockwood (her name is disguised to protect her privacy), was working in a San Diego, California, clinic that served AIDS patients. That day she used a BD standard 5-cc syringe and needle to draw blood from a patient known to be infected with AIDS. After drawing the blood, she transferred the AIDS-contaminated blood to a sterile test tube called a Vacutainer tube by sticking the needle through the rubber stopper of the test tube, which she was holding with the contaminated needle. She accidentally pricked her finger with the contaminated needle. A short time later, she was diagnosed as HIV positive.

Maryann Rockwood sued BD, alleging that, because it alone had an exclusive right to Sampson and Mitchell's patent design, the company had a duty to provide the safety syringe in all its sizes and that by withholding other sizes from the market it had contributed to her injury. Another contributing factor, she claimed, was the premium price BD had put on its product, which prevented employers like hers from purchasing even those sizes that BD did make. BD quietly settled this and several other, similar cases out of court for undisclosed sums.

By 1992, OSHA had finally required that hospitals and clinics give their workers free hepatitis B vaccines and provide safe needle disposal boxes, protective clothing, gloves, and masks. The Food and Drug Administration [FDA] also was considering requiring that employers phase in the use of safety needles to prevent needle sticks, such as the new self-sheating syringes that BD was now providing. If the FDA or OSHA required safety syringes and needles, however, this would hurt the US market for BD's standard syringes and needles, forcing it to

invest heavily in new manufacturing equipment and a new technology. BD, therefore, sent its Marketing director, Gary Cohen, and two other top executives to Washington, D.C., to convey privately to government officials that the company strongly opposed a safety needle requirement and that the matter should be left to “the market.” The FDA subsequently decided not to require hospitals to buy safety needles.

The following year, a major competitor of BD announced that it was planning to market a safety syringe based on a new patent that was remarkably like BD’s. Unlike BD, however, the competitor indicated that it would market its safety device in all sizes and that it would be priced well below what BD has been charging. Shortly after the announcement, BD declared that it, too, had decided to provide Safety-Lok syringe in the full range of common syringe sizes. BD now proclaimed itself the “leader” in the safety syringe market.

However, in 1994, the most trusted evaluator of medical devices, a non profit group named ECRI, issued a report stating that after testing it had determined that although BD’s Safety-Lok Syringe was safer than BD’s own standard syringe, nevertheless the Safety-Lok “offers poor needle stick protection.” The following year this low evaluation of the Safety-Lok Syringe was reinforced by the US Veteran’s Administration, which ranked the Safety-Lok Syringe below the safety products of other manufacturers.

The technology for safety needles took a giant step forward in 1998 when Retractable Technologies, Inc. [RT], unveiled a new safety syringe that rendered needle sticks a virtual impossibility. The new safety syringe, invented by Thomas Shaw, a passionate engineer and founder of RT, featured a syringe with a needle attached to an internal spring that automatically pulled the needle into the barrel of the syringe after it was used. When the plunger of the syringe was pushed all the way in, the needle snapped back into the syringe faster than the eye could see. Called the Vanishpoint Syringe, the new safety syringe required only one hand to operate and was acclaimed by nursing groups and doctors. Unfortunately, it was difficult for Retractable to sell its new automatic syringe because a new phenomenon that had emerged in the medical industry.

During the 1990s, hospitals and clinics had attempted to cut costs by reorganizing themselves around a few large distributors called Group Purchasing Organizations or GPOs. A GPO is an agent that negotiates prices for medical supplies on behalf of its member hospitals. Hospitals

became members of the GPO by agreeing to buy 85% to 95% of their medical supplies from the manufacturers designated by the GPO, and their pooled buying power then enabled the GPO to negotiate lower prices for them. The two largest GPOs were Premier, a GPO with 1,700 member hospitals, and Novation, a GPO with 650 member hospitals. GPOs were accused, however, of being prey to "conflicts of interest" because they were paid not by the hospitals for which they worked, but by the manufacturers with whom they negotiated prices (the GPO received from each manufacturer a negotiated percentage of the total purchases its member companies made from that manufacturer). Critics claimed that manufacturers of medical products in effect were paying off GPOs to get access to the GPO member hospitals. In fact, critics alleged, GPOs such as Premier and Novation no longer tried to bring their member hospitals the best medical products nor the lowest-price products. Instead, critics alleged, GPOs chose manufacturers for their members based on how much a manufacturer was willing to pay the GPO. The more money (the higher percentage of sales) a manufacturer gave the GPO, the more willing the GPO was to put that manufacturer on the list of manufacturers from which its member hospitals had to buy their medical supplies.

When Retractable tried to sell its new syringe, which was recognized as the best safety syringe on the market and as the only safety syringe capable of completely eliminating all needle sticks in a nursing environment, it found itself blocked from doing so. In 1996, BD had gotten Premier GPO to sign an exclusive, 7 1/2-year, \$1.8 billion deal that required Premier's member hospitals to buy at least 90% of their syringes and needles from BD. Around the same time, BD had signed a similar deal with Novation, that required its member hospitals to buy at least 95% of their syringes and needles from BD. Because hospitals were now locked into buying their syringes and needles from BD, or suffer substantial financial penalties, they turned away Retractable's salespeople, even when their own nursing staffs recommended Retractable's safety product as better and more cost-effective than BD's.

Although Retractable's safety syringe was almost double the cost of BD's, hospitals that adopted Retractable's syringe would save money over the long run because they would not have to pay any of the substantial costs associated with having their workers suffer frequent needle sticks and needle sticks infections. The CDC estimated that each

needle stick in which the worker was not infected by any disease cost a hospital as much as \$2,000 for testing, treatment, counselling, medical costs, and lost wages, plus immeasurable emotional trauma, anxiety, and abstention from sexual intercourse for up to a year. Those needle sticks in which the victim was infected by HIV, hepatitis B or C, or some other potentially lethal infection, cost a hospital between \$500,000 to more than \$1 million and cost the victim anxiety, sickness from drug therapy, and, potentially, life itself. Retractable's syringe completely eliminated all of these costs. Because all of the other syringes then on the market, including BD's Safety-Lok, still allowed some needle sticks to occur, they could not completely eliminate all the costs associated with needle sticks and so were not as cost-effective. (A CDC study found that BD's Safety-Lok, when tested by hospital health workers in three cities from 1993 to 1995, had cut needle-stick injuries only from 4 per 100,000 injections down to 3.1 per 100,000 injections, a reduction of only 23%, the worst performance of all the safety devices tested.) An econometric study commissioned by Retractable proved that its safety syringe was the most cost-effective syringe on the market.

In October 1999, ECRI, the nation's most respected laboratory for testing medical products, rated BD's Safety-Lok syringe "unacceptable" as a safety syringe, saying it might actually cause an increase in needle sticks because it required two hands to use it and one hand might accidentally touch the needle. It simultaneously gave Retractable's Vanishpoint syringe its highest rating as a safety syringe, the only safe syringe to achieve this highest level. BD objected strenuously to the low rating of its own syringe, and in 2001, the testing lab raised the rating for the Safety-Lok a notch to "not recommended." Retractable's Vanishpoint syringe, however, continued to receive the highest rating. In spite of being recognized as the best and most cost-effective technology for protecting health care workers from being infected through needlesticks, Retractable still found itself blocked out of the market by the long-term deals that BD had negotiated with the major GPOs.

In 1999, California became the first state to require its hospitals to provide safety syringes to its workers. Then, in November 2000, the Needle Stick Safety and Prevention Act was signed into law. The act required the use of safety syringes in hospitals and doctor's offices. In 2001, OSHA incorporated the provisions of the Needle Stick Safety and Prevention Act, finally requiring hospitals and employers to use safety

syringes and significantly expanding the market for safety syringes, a development that is expected to bring lower prices. None of this legislation required a specific type or brand of syringe and BD's safety devices were stocked by most GPO member hospitals.

Continuing to find itself locked out of the market by BD's contracts with Premier and Novation, Retractable sued Premier, Novation, and BD in federal court alleging that they violated antitrust laws and harmed consumers and numerous health care workers by using the GPO system to monopolize the safety needle market. In 2003, Premier and Novation settled with Retractable out of court, agreeing to henceforth allow its member hospitals to purchase Retractable's safety syringes when they wanted. In 2004, BD also settled out of court, agreeing to pay Retractable \$100 million in compensation for the damage BD inflicted on Retractable. During the 6 years that BD's contracts prevented Retractable and other manufacturers from selling their safety needles to hospitals and clinics, thousands of health care workers continued to be infected by needle sticks each year.²⁷

It is important to emphasize that the unethical methods used by Becton Dickinson Company to conserve its monopoly position of the syringe market – so detrimental to the medical personnel and to smaller, but more innovative competitors – had a strong legal support. One more argument proving that legality is not always ethical. The next case, that involves the famous Microsoft Corporation and its leader, Bill Gates, shows how commercial success may be obtained appealing to unethical competitive practices which take advantage of the imprecision and incompleteness of the legal regulations.

PLAYING MONOPOLY: MICROSOFT

On November 5, 1999, Bill Gates, then the richest man in the world, learned that a federal judge, Thomas Jackson, had just issued "findings of fact" declaring that his company, Microsoft, "enjoys monopoly power" and that it had used its monopoly power to "harm consumers" and crush competitors to maintain its Windows monopoly and to

establish a new monopoly in Web browsers by bundling its Internet Explorer with Windows. On the day the judgment was issued, Microsoft stock began its decline. The decline was hastened by an announcement in February 2000 that the European Commission, which enforces European Union laws on competition and monopolization, had been investigating Microsoft's anticompetitive practices in server software since 1997 and was extending its investigation to look into Microsoft's bundling of its Windows Media Player with Windows. Two months later, on April 3, 2000, US judge Thomas Jackson issued a second verdict, concluding on the basis of his earlier findings of fact that Microsoft has violated US antitrust law and was subject to the penalties allowed by the law. The price of Microsoft stock plunged, bringing the entire stock market down with it. Two short months later, on June 7, 2000, Judge Jackson ordered that Microsoft should be broken up into two separate companies – one devoted to operating systems and the other to applications such as word processing, spreadsheets, and Web browsers. With the price of Microsoft stock now skidding, Gates, who was no longer the richest man in the world, vowed that Microsoft would appeal this and any similar verdict and would never be broken apart.

Bill Gates was born in 1955 in Bremerton, Washington. When he was 13 years old, his grammar school acquired a computer terminal, and by the end of the year, he had written his first software program (for playing tic-tac-toe). During high school, he held a few entry-level programming jobs. Gates enrolled in Harvard University in 1974, but quickly lost interest in classes and quit to start a software business in Albuquerque, New Mexico, with a friend, Paul Allen, whom he had known since grammar school in Seattle. At that time, the first small but primitive personal computers were being manufactured as kits for hobbyists. These computers, like the Altair 8080 computer (which used Intel's new 8080 microprocessor, had no keyboard, no screen, and only 256 bytes of memory), had no accompanying software and were extremely difficult to program because they had to use "machine code" (consisting entirely of sequences of zeros and ones), which is virtually incomprehensible for humans. Gates and Allen together revised a program called BASIC (Beginner's All-purpose Symbolic Instruction Code, a program written several years earlier by two engineers who gave it away for free), which allowed users to write their own programs using an understandable set of English instructions, and they adapted it

so that it would work on the Altair 8080. They sold the adaptation to the maker of the Altair 8080 for \$3,000.

In 1977, Apple Computer marketed the first PC aimed at consumers, and by 1978, more than 300 dealers were selling the "Apple II". That year, Gates and Allen began writing software programs for the Apple II, renamed their company *Microsoft*, and moved it to Seattle, where, with 13 employees, it ended the year with revenues of \$1.4 million. In 1979, two hobbyists developed VisiCalc, the first spreadsheet program, for the Apple II, and Microsoft developed MS Word, a rudimentary word processor for the Apple II. With these new software "applications," sales of the Apple II took off and the PC market was born. By 1980, Microsoft, which continued writing programs for the growing PC market, had earnings of \$8 million.

In 1980, IBM belatedly decided to enter the growing market for PCs. By now, many other companies had flocked into the PC market, including Radio Shack, Commodore, COMPAQ, AT&T, Xerox, DEC, Data General, and Wang. By 1984, some 350 companies around the world would be making PCs. Because IBM needed to enter the market quickly, it decided to assemble its computer from components that were readily available on the market. A key component that IBM needed for its computer was an operating system. An operating system is the software that allows application programs (like a word processor, spreadsheet, browser, or game) to run on a particular machine. Every computer must have an operating system or it cannot run any application programs. The operating system coordinates the various components of the computer (keyboards inputs, monitor, printer, ports, etc.) and contains the applications programming interface (API), which consists of the codes that applications use to "command" the computer to carry out its functions. Application programs, such as games or word processors, are written so that they will run on a specific operating system by making use of that operating system's API to make the computer carry out the program's commands. Unfortunately, a program written for one operating system will not work on another operating system. Most of the companies making PCs had developed their own operating systems, although several made use of one called CP/M, which was written to work on many different computers. Applications developed to run on CP/M could run on any computer using CP/M. This meant that an application did not have to be rewritten for each

different kind of computer, but could be written once for CP/M and would then run on any computer using CP/M.

IBM needed an operating system quickly and approached the maker of CP/M for a license to use CP/M but was turned down. The somewhat desperate IBM representatives then met with Bill Gates to ask whether Microsoft had one available. Although Microsoft at the time did not own an operating system, Bill Gates told IBM that he could provide one to them. Immediately after the IBM meeting, Bill Gates went to a friend who he knew had written an operating system that was a “knock-off of CP/M” and that could work on the computer IBM was planning. Without telling his friend about the meeting with IBM, Gates offered to buy his friend’s operating system for \$60,000. The friend agreed. After some tweaking, Microsoft licensed the system to IBM as MS-DOS, with the proviso that Microsoft could also license MS-DOS to other computer manufacturers. When IBM started mass-producing its PC in 1981 (IBM’s share of the market went from nothing in 1981, to 10% in 1983, and 40% in 1987) and other computer makers began producing copies of IBM’s computer, MS-DOS became the standard operating system for PCs built according to IBM’s standards. Bill Gates’ company was on its way to becoming a billion-dollar firm.

Because an application program has to be written to work on a specific operating system, and because so many computers were using now the MS-DOS operating system, software companies were much more willing to create programs for the large market of MS-DOS users than for the much smaller numbers of people using other competing operating systems. As thousands of new software programs were developed for MS-DOS – including Microsoft’s own spreadsheet, Multiplan, and its word processor, MS Word – even more people adopted MS-DOS, initiating what economists call a *network effect*. A product creates a network effect when the value of the product to a buyer depends on how many other people have already bought the product. A standard example of a product that creates a network effect is a communication network like a telephone network. The more people are connected to a telephone network, the more valuable it will be for a new subscriber to be connected to the network since he can communicate with more people. Many products besides communication networks can give rise to network effects, including, of course, operating systems. The more people that own an operating system, the more that software companies are willing to write programs for that

operating system. The more software programs they write for operating system, the more people want to buy the operating system. Because of this network effect, the proportion of computers using MS-DOS quickly increased, and the proportion of computers using other operating systems (such as CP/M, Apple computer's, or Atari's or Commodore's) declined.

However, in 1984, Apple Computer developed an innovative new operating system for its own computers that used intuitive graphics or pictures that let users issue commands to the computer by selecting icons and pull-down menus on the screen using a mouse. The new operating system was tremendously popular, and Apple sales began to climb. In 1987, however, Microsoft began selling Windows, a new operating system for IBM-compatible computers that copied Apple's operating system. Unlike MS-DOS, which had used obscure combinations of characters to issue commands to the computer, Windows used graphics that were similar to Apple's, had virtually the same pull-down menus and icons, and the same usage of the same mouse. Apple sued Microsoft on the grounds that, in copying the "look and feel" of their operating system, Microsoft had stolen a key piece of their copyrighted property. Apple lost the suit and, with the loss of its key software advantage, its market share withered away.

Although early versions of Windows were not very good, quality improved over the years. In 1995 Microsoft issued Windows 95, in 1998 it issued Windows 98, in 2000 it issued the *Millennium* version of Windows, and two years later it issued Windows XP. The next version of Windows was code-named "Longhorn". As the new millennium began, Microsoft controlled 90% of the PC operating system market – a virtual monopoly – and Bill Gates was fabulously rich.

In the early 1990s, however, two threats to Microsoft's monopoly had emerged. One was Netscape, an Internet browser, and the other was Java, a programming language. The Internet is a network through which digital information, pictures, sounds, text, and other digital data can be sent from one computer to another. To make these data usable, a user's computer must be connected to the Internet and must have a software program called a *browser*. The browser takes the digital data that come through the Internet and transforms them into an intelligible picture or text that can display on the user's computer screen or into a sound that can play on the computer's speakers. However, a browser is not only capable of interpreting digital data that come over the Internet, it can

also execute the instructions of software programs, whether those programs are sent over the Internet or reside in the user's own computer. In this respect, a browser functions much like an operating system. Some people predicted that someday every computer might rely on a browser instead of an operating system to run software programs. Although the browser would still need some rudimentary operating system to run, this operating system did not have to be Windows. Windows could become obsolete. Netscape, a company that began selling a browser named Navigator on December 15, 1994, quickly captured 70% of the browser market. In May 1995, Bill Gates wrote an internal memo to his executives, warning: "A new competitor 'born' on the Internet is Netscape. Their browser is dominant, with a 70% usage share, allowing them to determine which network extensions will catch on. They are pursuing a multi-platform strategy where they move the key API [applications programming interface] into the client to commoditize the underlying operating system."

In addition to the browser threat, Microsoft was also worried about Java, a programming language that Sun Microsystems, a manufacturer of computer hardware and software, had developed in May 1995. Programs written in the Java language can operate on any computer equipped with Java software, regardless of the operating system the computer used. In this respect, Java software also could function like an operating system and also threatened to make Windows obsolete. In an internal memo, a Microsoft senior executive stated that Java was "our major threat", and in September 1996, Bill Gates wrote an e-mail saying, "This scares the hell out of me," and asked managers to make it a top priority to neutralize Java.

To make matters worse, Java and Netscape joined forces. Netscape agreed to incorporate the Java software into its Navigator browser so that any programs written in Java would work on a computer that was using Netscape. This meant that short programs written in Java could be sent over the Internet and then run on the user's computer through its Netscape browser. This also meant that Java programs did not need Windows, but could run on any computer using any operating system so long as it was also using Netscape's Navigator browser. Because Java was now being distributed together with Netscape, the number of computers equipped with Java rapidly multiplied. A Microsoft executive fearfully wrote in a memo that Netscape's browser had become the "major distribution vehicle" for Java.

According to the “findings of fact” accepted by the judge presiding over the Microsoft antitrust trial, Microsoft quickly embarked on a campaign to undercut the threat that Netscape now posed to its monopoly. First, a team of Microsoft executives met with Netscape’s executives in June 1995. Microsoft’s people proposed that Microsoft should provide the browser for Windows computers while Netscape should provide browsers for all other computers – essentially the 10% of computers that ran on Apple’s operating system, on OS/2, or on other relatively minor operating systems. A memo written the next day by a Microsoft executive who was present stated that a goal of the meeting was to “establish Microsoft ownership of the Internet client platform for Win95.” Netscape refused to go along with this plan to divide the browser market. Microsoft then refused to share the codes for Windows 95 so that Netscape would be unable to develop a browser for Windows 95. Netscape had to wait several months after Windows 95 was released before it finally got hold of its codes and was finally able to develop a new version of Navigator that would take advantage of the Windows 95 applications interface.

Microsoft also developed its own browser by borrowing a browser program it had earlier licensed from Spyglass Inc, renaming it Internet Explorer, and copying many of Netscape’s features onto it. (The Chairman of Spyglass later complained that “whenever you license technology to Microsoft, you have to understand it can someday build it itself, drop it into the operating system, and put you out of that business.”) Unfortunately, when Microsoft tried to sell its browser in 1995, users felt it was inferior to Netscape and sales lagged. Microsoft continued working on its browser, and its fourth version, Internet Explorer 4.0, released in late 1997, finally began to compare favorably to Netscape’s browser. Still, few people were buying Internet Explorer. Microsoft then decided to use its operating system monopoly to undercut Netscape. In February 1997, Christian Wildfeuer, a Microsoft executive, suggested in an internal memo that it would “be very hard to increase browser share on the merits of Internet Explorer 4 alone. It will be more important to leverage our Operating System asset to make people use Internet Explorer instead of Netscape’s Navigator.” If Internet Explorer was bundled together with Windows, so that when Windows was installed on a computer Internet Explorer was also automatically installed, then users would tend to use Internet Explorer rather than go through the expense and trouble of purchasing and

installing Netscape. Accordingly, Microsoft incorporated a copy of Internet Explorer into Windows 95 that automatically installed itself when Windows was installed. Windows 98 went farther by integrating Internet Explorer into the operating system so that it was extremely difficult for a user even to remove Internet Explorer. Moreover, when a user “uninstalled” Internet Explorer, it stayed in the computer and still appeared when Windows 98 was running certain commands. Although this integration made Windows 98 run more slowly and consumed resources on the user’s computer, it also made it much more difficult and risky for users to try to replace Internet Explorer with Netscape Navigator. Microsoft claimed that it was now giving Internet Explorer away “for free”, but skeptics pointed out that the costs of developing the browser had to be recovered from sales of Windows and so a portion of what the consumer paid for a copy of Windows went to pay the costs of developing the browser.

Microsoft did more than bundle Internet Explorer with Windows. According to the court’s “findings of fact”, Microsoft required any computer maker that wanted Windows on its computers to agree that it would not remove Windows Explorer and would not promote Netscape’s browser. If a computer maker also agreed to not even give its customers a copy of Netscape, Microsoft discounted the price of Windows. Because Microsoft’s monopoly meant that computer manufacturers either had to install Windows on their computers or make them virtually useless, manufacturers had no choice but to sign the agreements that shut Netscape out of the market. Although users were still able to buy a copy of Netscape from a retailer, the number of users doing this declined. Not only would purchasing a copy of Netscape require paying extra for software that would do much of what their installed Internet Explorer could already do but it also required that they perform the tricky task of removing Internet Explorer from their computers and installing Netscape in its place. Not surprisingly, Netscape’s share of the market rapidly dropped, and Internet Explorer’s rapidly rose – a successful outcome of Wildfeuer’s strategy “to leverage our Operating System asset to make people use Internet Explorer instead of Navigator.”

Microsoft dealt with its Java threat by asking Sun Microsystems for the right to license and distribute Java with its Windows system. Sun Microsystems gave Microsoft that right, not knowing that Microsoft was planning to change Java. The version of Java that Microsoft

distributed was a version that incorporated several changes that would no longer allow regular Java programs to run on computers using Microsoft's Java. Thus, there were now two versions of Java, and the version that most users were getting installed with their Windows computers was a version that was incompatible with the regular version of Java and that Microsoft now owned. Microsoft had apparently planned this move because an earlier internal Microsoft document stated that it was a "strategic objective" for Microsoft to "kill cross-platform Java" by expanding the "polluted Java M" – a reference to Microsoft's own "polluted" version of Java. This happened because all Windows-based computers now incorporated a copy of Microsoft's Java, not Sun's. Microsoft encouraged these developers by offering them special technical support and other inducements. In effect, Microsoft had turned Java into a part of Windows so that there was now little threat that Windows would be rendered obsolete by Java.

But on May 18, 1998, the US Department of Justice [DOJ], then headed by US Attorney General Janet Reno (an appointee of Democratic President Bill Clinton), filed an antitrust suit against Microsoft in Judge Jackson's court, claiming that the company had violated the Sherman Antitrust Act by engaging in a "pattern of anticompetitive practices designed to thwart browser competition on the merits, to deprive customers of choice between alternative browsers, and to exclude Microsoft's Internet browser competitors," especially Netscape and Java. The DOJ claimed that Microsoft had violated the antitrust act in four ways: (a) Microsoft forced computer companies that used its Windows operating system to sign agreements that they would not license, distribute or promote software products that competed with Microsoft's own software products; (b) Microsoft "tied" its own browser, Internet Explorer, to its Windows operating system, so that customers who purchased Windows also had to get Internet Explorer, although these were separate products, and tying the two products together degraded the performance of Windows; (c) Microsoft had attempted to use its operating system monopoly to gain a new monopoly in the Internet browser market by forcing computer companies that used its Windows operating system to agree to leave Internet Explorer as the default browser and to not preinstall or promote the browser of any other company; and (d) Microsoft had a monopoly in the market for PC operating systems and had used anticompetitive and predatory tactics to maintain its monopoly power. As a penalty to

ensure that Microsoft not engage in such behaviors again, the DOJ recommended that the part of the company devoted to creating Windows should be spun off and separated from the part that developed browsers and software applications.

On June 7, 2000, Judge Jackson found Microsoft guilty of counts b, c, and d, and ordered that the company be broken up into two separate companies – one to develop and market operating systems and the other to develop and market all other Microsoft programs. Although the judge could have simply ordered Microsoft to cease engaging in the illegal practices, he feared that policing such an order would require so much government oversight that it was simply not practical. The judge also ruled that the two new companies would not be allowed to share any technical information with each other that they did not share with all their other customers. Nor could Microsoft punish or threaten any computer manufacturers for distributing or promoting the products or services of its competitors. Finally, Judge Jackson ordered that Microsoft had to let computer manufacturers remove any Microsoft applications from its Windows operating system. The judge ruled, however, that Microsoft would not have to implement his orders until it had time to appeal his decision.

In a defensive “white paper”, Microsoft stated: “Antitrust policy seeks to promote low prices, high output, and rapid innovation. On all three measures, the PC software industry generally – and Microsoft in particular – is a model of competitiveness. [. . .] Market share numbers do not reflect the highly dynamic nature of the software industry, where entire business arguments can disappear virtually overnight as new technologies are developed.”

Microsoft claimed that it was responsible for much of the innovation that characterized the software industry. In addition, it claimed that its actions, including its decision to bundle Internet Explorer with Windows and its decision to “improve” Java by changing it, were all done to help consumers and give them more value for their money.

Microsoft appealed the judge’s verdict, and on June 28, 2001, a federal court reversed Judge Jackson’s breakup penalty. The federal appeals court held that, based on interviews he gave to the news media during the case, Jackson appeared to be biased against Microsoft, and this bias might have affected the severity of the penalty he had imposed on the company. Although Jackson’s findings of fact were to remain in

place, the appeals court held that a new penalty would have to be devised for the company.

The previous year, however, George W. Bush had been inaugurated president and his administration has assigned a new person, John Ashcroft, as the new attorney general to head up the DOJ. According to Edward Roeder, an expert on corporate political contributions, in the previous 5 years Microsoft had begun contributing heavily to the Republican Party's election campaigns, contributing about 75% of its \$6-million-dollar-a-year 2000 political contributions to Republicans, creating "an unprecedented campaign to influence the new Administration's antitrust policy," and to "escape from the trial with its monopoly intact." On September 6, 2001, the new Republican-appointed head of the DOJ announced that it would no longer seek the breakup of Microsoft but would, instead, seek a lesser penalty. Two months later, on November 2, 2001, the DOJ announced that it had reached a settlement with Microsoft. According to the agreement, Microsoft would share its application programming interface with other rival software companies who wanted to write applications (such as word-processing programs or games) that could run on Windows; it would have to give computer makers and users the ability to hide icons for Windows applications, such as the icon for Internet Explorer or for Microsoft's digital media player; it could not prevent competing programs from being installed on a Windows computer; it could not retaliate against computer makers who used competing software.

A three-person panel would be given complete access to Microsoft's records and source code for the next 5 years to ensure that Microsoft complied with the agreement. Microsoft, however, would not be prevented from bundling whatever software programs it wanted with its Windows operating system. The new judge appointed to the case, Judge Colleen Kollar-Kotelly, reviewed the settlement and on November 1, 2003, she handed down a decision essentially ratifying the settlement between Microsoft and the DOJ. The state of Massachusetts and two computer trade groups, however, who objected to the settlement as a mere slap on the wrist, filed an appeal, arguing that Microsoft's monopolistic behaviors deserved tougher sanctions. That appeal came to an end on June 30, 2004, when a federal appeals court ruled that the 2001 settlement satisfied the legal requirements for addressing Microsoft's violations of antitrust laws. By that time,

Microsoft had settled several suits with other states and companies and had paid a total of \$1.5 billion to these parties.

Microsoft's monopoly woes were not quite over, however. In 1997, the EU's "Competition Commissioner" had announced that the EU was investigating allegations that Microsoft had illegally used its Windows monopoly power to try to establish a new monopoly in the server market by refusing to share its Windows application programming interface with companies making software for servers (servers are computers that connect several other computers together). If other companies are not given the Windows API, only Microsoft would be able to write server programs for Windows computers, thereby giving it a new monopoly in the server market.

In 2000, the European Commission expanded its investigation to look into how Microsoft had bundled its Windows Media Player together with the company's new Windows 2000 operating system. Because all buyers of Windows 2000 already had Microsoft's Digital Media Player installed on their computers, they were not likely to buy a competitor's digital media player. In this way, suggested the commission, Microsoft would gain a new monopoly in the market for digital media players.

In April 2004, the European Commission issued its final ruling on its investigations. It concluded that, "Microsoft Corporation broke EU competition law by leveraging its near monopoly in the market for PC operating systems onto the markets ... for servers ... and for media players." The commission fined Microsoft 497 million Euros (equivalent to about \$613 million) and ordered it (1) to disclose to competitors the interfaces required for their server software to work with Windows computers and (2) to offer a version of Windows without Microsoft's own Digital Media Player.

Microsoft immediately appealed this ruling to the European Court of First Instance. In addition, it asked that the second order be suspended until the European Court of First Instance had ruled on its appeal. In June 2004, the European Commission agreed that until the court ruled on the appeal, Microsoft did not have to offer a version of Windows without its Digital Media Player. Experts on European law said the appeal could take several years.

Meanwhile, some governments had stopped purchasing Windows and had instead adopted Linux, a free "open-source" operating system. Among these were Italy, Germany, Great Britain, France, India, South

Korea, China, Brazil and South Africa. Several companies, including Amazon.com, FedEx, and Google, had moved to Linux. A study by Forrester Research found that 72% of companies it surveyed were increasing their use of Linux, and over half of them were planning to replace Windows with Linux.²⁸

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CORPORATE RESPONSIBILITY

“Holy Grail” or “Emperor’s Cloths” in business ethics?

Ethical theories help to make rational and morally valid decision. These decisions are supposed to comply with the moral norms, which serve promoting certain moral values. Some people wish to act ethically in their business activities because they do have strong moral beliefs, which forbid them to seek maximum profit under any terms, by any available means. Other people are less sensitive to ethics, but the logic of enlightened-interest leads them to accept that moral decency in business is a competitive advantage; therefore, they also seek to be as profitable as possible, but not ignoring ethical norms and values. In any case, ethical behaviour in business implies taking certain responsibilities. Two questions arise: “What kind of responsibilities business is supposed to take?” and “Who is the bearer of moral responsibility in business?” The next case might help to start looking for an answer.

GOODRICH A7D DEFECTIVE BREAKS

Several years ago, B. F. Goodrich, a manufacturer of vehicle parts, won a military contract to design, test, and manufacture aircraft brakes for the A7D, a new airplane the Air Force was designing. To conserve weight, Goodrich guaranteed that its compact brake would weigh no more than 106 pounds, contain no more than four small braking disks or “rotors,” and stop the aircraft within a certain distance. The contract was potentially quite lucrative for the company and so managers were

anxious to deliver a brake that “qualified” by successfully passing tests showing it could stop the aircraft as required.

Kermit Vandivier, a Goodrich employee, was given the job of working with Goodrich engineers to write up the report of the tests run on the brake, which the government was unlikely to question and even less likely to repeat. Unfortunately, Vandivier later wrote, when the small brake was tested, the brake linings on the rotors repeatedly “disintegrated” because “there simply was not enough surface area on the disks to stop the aircraft without generating the excessive heat that caused the linings to fail.” His superiors, however, told him that, “regardless of what the brake does on tests, we’re going to qualify it.” After running several tests, Vandivier was told to write up a report stating that the brake has passed the tests. Vandivier explained to his superior that “the only way such a report could be written was to falsify test data,” to which his superior replied, “he was well aware of what was required, but that he had been ordered to get a report written regardless of how or what had to be done.” Therefore, Vandivier had to decide whether he would participate in writing up the false report. He later stated:

“My job paid well, it was pleasant and challenging, and the future looked reasonably bright. My wife and I had bought a home [. . .] If I refused to take part in the A7D fraud, I would have to either resign or be fired. Someone would write the report anyway, but I would have the satisfaction of knowing I had had no part in the matter. But bills aren’t paid with personal satisfaction, nor house payments with ethical principles. I made my decision. The next morning I telephoned [my superior] and told him I was ready to begin the qualification report.”

As he worked on the report, Vandivier said, he talked with the senior executive assigned to the project and asked him if his conscience would hurt him if such a thing caused the death of a pilot. “This is when the executive replied that I was worrying about too many things that did not concern me and advised me to ‘do what you’re told’.”¹

According to Manuel Velasquez, this sad true story reveals three types of responsibility issues. There are, first, *systemic issues*: questions about the morality of the government contracting system, which allows B. F. Goodrich to test the adequacy of its own brake

design for the A7D. Talking about responsibility, we discover some *corporate issues*: questions about B. F. Goodrich's corporate culture or questions about the company's corporate decision to "qualify" the A7D brake. For example, did the company violate anyone's rights in deciding to qualify the brake? Was the company thinking of how society's welfare would be affected? Was ethics concerns part of its ongoing decision-making process? Did the company encourage or discourage employee discussions of how their actions might impact the moral rights of other people? Similar questions arise about the morality of Merck's corporate decision to invest so many millions of dollars in a project that the company knew would probably not generate any profits. In doing this, did the company violate the rights of its stockholders? Was Merck's decision fair and just to the various parties that decision affected? Finally, and most obviously, there are *individual issues*: was Vandivier's decision to participate in writing a report that he believed to be false morally justified? Similarly, was moral Dr. P. Roy Vagelos' decision to allow Merck's researchers to develop a drug that would probably not generate any profits? In the light of traditional moral philosophy, we feel the best prepared to tackle the individual responsibility issues.

Moral Responsibility in Business

The term *moral responsibility* has two distinct meanings: first, moral duty or moral obligation ("Vandivier had a moral responsibility not to lie."); second, one person is to blame for something ("Vandivier was morally responsible for the deaths of five pilots who crashed when trying to land the A7D airplane".)

A person is morally responsible for an injury or a wrong on three conditions: the person caused or helped cause it, or failed to prevent it when he could and should have; the person did so

knowing what he or she was doing; the person did so of his / her own will.

The absence of any of these three elements would eliminate a person's responsibility for an injury and so would fully „excuse” a person from any blame for that injury. That is exactly the way asbestos manufacturers tried to defend themselves when accused of forcing their employees to work in a hazardous environment.

ASBESTOS AND LUNG DISEASES

Several manufacturers of asbestos were recently held responsible for the lung diseases suffered by some of their workers. The judgment based in part on the finding that the manufacturers had a special duty (a duty they were assigned by their position) to warn their workers of the known dangers of working with asbestos. Yet they knowingly failed to perform this duty, and the lung diseases were a foreseen injury that they could have prevented had they acted as they had a duty to act.

In their defence, the asbestos manufacturers argued that: The lung injuries suffered by their workers were not caused by working with asbestos, but by smoking. They did not know that conditions in their plants would cause lung cancer in their workers. They were not free to prevent the injuries because they had tried to get their workers to wear protective masks, but the workers refused and so they were injured, because of circumstances the manufacturers could not control.

If any of these claims were true, then the manufacturers could not be morally responsible for the lung diseases of their workers.

The first requirement for moral responsibility is a real connection between the agent's action and that action's consequences: the person must either cause the injury or else must fail to prevent it when she could and should have done so. In many cases, it is easy to determine whether a person's actions “caused” an injury or wrong. In such cases, we speak of *commissions*. Nevertheless, it is not so easy when a party does not cause an injury but merely fails to prevent it. In such cases, we speak of *omissions*.

NIKE AND CHILD LABOUR

Nike is a household name when it comes to sports apparel and equipment. It has worked hard to burnish its image, especially by garnering endorsements from big names in the sports world, such as Michael Jordan. But in 1996 its silver image began to tarnish. It knew it was in trouble when an article on child labour in Pakistan appeared in *Life* magazine with a picture of a 12-year-old boy sewing a Nike soccer ball in a factory, and activists started showing up in front of Nike outlets holding posters with the boy's picture on it. Although child labour is illegal in Pakistan, the law is not enforced and child labour is widespread. The factory in question was not run by Nike, but by a subcontractor or supplier. Nonetheless, Nike was held responsible by many, especially in the US and Canada. One immediate result was a „Boycott Nike” movement, which has continued to monitor and report on Nike's actions.

Nor was the report from Pakistan an isolated incident for Nike. Also in 1996, CBS's 48 Hours reported on working conditions in Vietnam, featuring Nike and the abuses of workers who made some of Nike's products. Since 1996, Nike has been charged by critics with engaging in a variety of unethical employment practices in countries that exercise little or no control over the conditions of labour or whose governments are corrupt and can be bought off. For Nike had and continues to have a reputation for producing its products in less developed countries, known for the cheapest labour and the laxest law enforcement, including China, Viet Nam, Bangladesh and Indonesia. At Nike's invitation, the Viet Nam Labour Watch conducted a six-month investigation and its report details discrepancies between what Nike told American customers and what the group itself uncovered. One significant item in the report is the statement that non-Nike shoe factories the group visited in Vietnam had better working conditions and paid higher wages.

In 1998, Nike pledged to make sure its factories adhered to acceptable labour practices and agreed to let labour and human rights groups inspect its facilities. Yet its critics continued to track the company. In 2000, Victoria International Development Education Association (VIDEA) in Canada published a book of facts about Nike, which noted among other things that Nike, which paid its 80,000 Indonesian factory workers ten cents an hour, could double their wages at a cost of less than \$20,000,000 – the amount that Nike paid Michael

Jordan for promoting its products. It paid \$200 million to sponsor the Brazilian soccer team. VIDEA also claimed that the cost of making one pair of Nike running shoes was approximately \$5.00, although they retail for more than \$100 and for as much as \$189. The figures by themselves, of course, do not present the whole picture. However, at least on the surface they suggest exploitation of labour and a terrible disparity between manufacturing and advertising expenditures.

In 2001, Nike's CEO, Philip Knight, claimed that the company's policy with respect to the employment of child labour was „the highest in the world: 18 for footwear manufacturing, 16 for apparel and equipment.” Nonetheless, he acknowledged that there were instances in which the company used contract factories abroad, where the policies had been violated. With respect to the company's violations in Cambodia, violations reported by the BBC, Mr. Knight cited the fact that evidence of age could buy there for as little as \$5 and that, following the charge, the company re-examined all employee records there. The reply did not satisfy critics.²

The athletic shoe company has been the centre of a controversy over its responsibility for the mistreatment of the workers who make its shoes. Nike does not actually manufacture any of the athletic shoes it sells. Instead, Nike designs its shoes in Seattle, and then pays companies in developing countries (China, Indonesia, India, etc.) to make the shoes according to these designs. These foreign supplier companies have directly mistreated and exploited their workers.

Nike has claimed that it is not morally responsible for this mistreatment, because the supplier companies caused the injuries of their employees. Thus, Nike itself did not cause the injuries. Critics have responded that although it is true that Nike did not directly cause the injuries, Nike could have prevented those injuries by forcing its suppliers to treat their workers humanely. If it is true that Nike had the power to prevent the injuries, and should have done so, then Nike met the first condition for moral responsibility. However, if Nike was truly powerless to prevent these injuries – if

Nike had no control over the actions of its suppliers – then it did not meet the first condition.

People are morally responsible for an injury when they failed to prevent it, *only if* they “should have” prevented it. People cannot hold morally responsible for all the injuries they know about and fail to prevent. Each of us is not morally responsible for failing to save all the members of all the starving groups in the world that we learn about by reading the newspapers, even if we could have saved some of them. If we were morally responsible for all these deaths, then we would all be murderers many times over and this seems wrong.

A person is responsible for failing to prevent an injury only when, for some reason, the person had an obligation to prevent that particular injury. Such an obligation generally requires some sort of special relationship to the injury or the injured party. For example, if I know I am the only person near enough to save a drowning child, and I can do so easily, then my special physical relationship to the child creates in me an obligation to save the child and so I am morally responsible for the child’s death if I fail to prevent it. Or if I am a police officer on duty and see a crime that I can easily prevent, then, because it is my job to prevent such crimes, I have a specific obligation to prevent this crime and am morally responsible if I fail to do so. Employers likewise have a special obligation to prevent work injuries on their employees and so are morally responsible for any foreseen work injuries they could have prevented.

The second requirement for moral responsibility is concerned with the agent’s *knowledge* of the relevant aspects in a situation. The person must know what she is doing. If a person is ignorant of the fact that her actions will injure someone else, then she cannot be morally responsible for that injury.

A person may be ignorant of either the relevant facts the relevant moral standards. I may be sure that bribery is wrong (a moral standard), but may not realize that in tipping a customs

official I was actually bribing him into cancelling certain import fees (a fact). In contrast, I may be genuinely ignorant that bribing government officials is wrong (a moral standard), although I know that in tipping the customs official I am bribing him into reducing the fees I owe (a fact). Ignorance, however, does not always excuse a person.

One exception occurs when a person deliberately stays ignorant of a certain matter to escape responsibility. If Nike managers told their suppliers that they did not want to know what was going on in their factories, they would still be morally responsible for whatever mistreatment went on that they could have prevented. A second exception occurs a person negligently fails to take adequate steps to get information about a matter that has its own importance. A manager in an asbestos company, who has reason to suspect that asbestos may be dangerous, but who, out of laziness, fails to gather information on the matter, cannot plead ignorance as an excuse.

The third requirement for moral responsibility: The person must act of his own *free will*. Someone acts of his own free will when the person acts deliberately or purposefully and his actions are not the result of some uncontrollable mental impulse or external force.

A person is not morally responsible if he causes injury because he lacked the power, skill, opportunity, or resources to prevent his actions from resulting in injury. Nor is a person morally responsible when physically forced to inflict an injury on someone else. The same when the agent is physically restraint from doing something to prevent the injury, nor when a person's mind is psychologically impaired in a way that prevents her from controlling her actions. An employee may injure a fellow worker when a machine he thought he knew how to operate suddenly veers out of his control. A manager working under extremely stressful circumstances may be so tense that one day he is overcome by rage at a subordinate and genuinely is unable to control his actions toward the subordinate. An engineer who is part of a larger

operating committee may be unable to prevent the other committee members from making a decision that the engineer feels will result in injury to other parties. An assembly-line worker with an undiagnosed malady may suffer muscle spasms that cause the assembly line to malfunction in a way that inflicts physical injuries on other workers.

In all of these cases, the person is not morally responsible for the wrong or the injury, because the person did not choose the action deliberately or purposefully, but was forced to inflict the injury by a mental impairment or some uncontrollable external forces.

We can distinguish three types of mitigating factors that can lessen a person's moral responsibility.

First, we should consider circumstances that minimize, but do not completely remove a person's involvement in an act that caused or brought about an injury. This kind of circumstance affects the degree to which the person *actually caused* or helped to cause the injury. An engineer may be aware of the unsafe features in somebody else's design, but passively stand by without doing anything about it because „that's not my job". In general, the less one's actual actions contribute to the outcome of an act, the less one is morally responsible for that outcome.

Certain circumstances leave a person uncertain, but not altogether unsure about a variety of matters (facts, moral standards, seriousness of the wrongdoing. etc.). This kind of circumstance affects the person's *knowledge*. An office worker who is asked to carry proprietary information to a competitor might feel fairly sure that doing so is wrong, yet may also have some genuine uncertainty about how serious the matter is.

Finally, there are circumstances that make it difficult but not impossible for the person to avoid doing it. This kind of circumstance affects the person's *free will*. Sometimes, middle managers meet intense pressure or threats by their superiors to reach unrealistic production targets or to keep certain health

information secret from workers or the public, although it is clearly unethical to do so. If the pressures on managers are great enough, then their responsibility correspondingly diminishes.

The extent to which these three mitigating circumstances can diminish a person's responsibility for a wrongful injury depends on the seriousness of the wrong. If my employer threatens to fire me unless I sell a used product that I know will kill someone, it would be wrong for me to obey him, even though loss of a job will impose heavy costs on me.

The notion of corporate moral responsibility

This is by far the most difficult and the most important question. "Nothing is more practical than a good theory", said Kurt Lewin. His statement is perfectly valid when applied to corporate responsibility. Initially a topic in academic debates, this concept has become in the last two decades a vast field of research and, even more important, a current and essential practice of contemporary business. "Eighty-one percent of [American] executives said, in a 2005 poll, that corporate responsibility is essential to their business. They disagree about what exactly 'corporate responsibility' means, but the majority believe that business should serve as a steward in society, and that it has a duty to investors, employees, consumers, communities, and the environment. These views were shared by executives from small, medium, and large-sized enterprises, and reflect a trend that sees more and more companies publicly reporting on their social and environmental performance."³

The most inflamed ethical controversies focus nowadays on the operations of the big corporations, frequently accused of lack of moral responsibility towards large categories of stakeholders. It is not surprising given the huge influence the multinational corporations bear upon the entire economic life at global scale.

Velasquez presents some relevant figures, even though not very up-to-date:

Today, large corporate organizations dominate our economies. "In 2003, General Motors [. . .] had revenues of \$195.6 billion and employed more than 325,000 workers; Wal-Mart, the world's largest retailer, had sales of \$258.7 billion and 1,400,000 employees; General Electric, the world's largest maker of electrical equipment, had sales of \$134 billion and 305,000 employees; and IBM, the world's largest computer company, had revenues of \$89 billion and 319,000 employees. Of the world's 190 nations, only a handful (e.g., Canada, France, Germany, Italy, Japan, United States, Russia, United Kingdom) had government revenues larger than anyone of these companies' sales revenues, and most of the world's nations had fewer workers engaged in their entire auto, retailing, electrical, or computer industries than did these gigantic companies. About half of America's combined industrial profits and earnings are in the hands of about 100 such large corporations, each of which has assets worth over \$1 billion. The 195,000 smaller firms, each with assets of less than \$10 million, control only about 10 percent of the nation's assets and profits. *Fortune* magazine reported in its 2004 annual survey that the 500 largest American corporations had combined sales of \$7.5 trillion (more than the gross domestic product of Japan and Germany combined), total profits of \$445.6 billion (about half of the U.S. total), and employed more than 10 percent of the U.S. workforce. These 500 corporations account for about 65 percent of all industrial sales, 80 percent of all industrial profits, 80 percent of all industrial assets, and about 75 percent of all industrial employees. Yet they comprise only about 0.2 percent of the total number of industrial firms operating in the United States.⁴

The meaning of corporate responsibility depends on the scope of our perspective when we try to define the intrinsic purpose of private enterprise. Taking a micro level perspective, profit is the intrinsic and sole purpose of business. According to enlightened self-interest, long-term success in business requires to fulfil the expectations of different categories of stakeholders – consumers, employees, suppliers, local communities, etc. "Although its responsibilities to stakeholders are limited," says Sternberg, "the business cannot afford to ignore any stakeholder concern which

might affect long-term owner value. It is not just the reactions of owners, which affect the operations of the business, but also those of employees and customers, suppliers and regulators. Their tastes and preferences, including their moral preferences, will influence their willingness to deal with the business, and thus must be considered in assessments of long-term owner value. It is as important to be straight with suppliers as with shareholders, as necessary to be fair to employees as to customers.”⁵ This view, claiming that the undertaking of certain moral restrictions and obligations as an efficient means to maximize profit – the sole or, at least, privileged aim of business – finds its most suggestive expression in the frequently quoted principle: “Good ethics is good business”. An ethical behaviour in business is profitable, whereas unethical conduct, even though might be in short term expedient, discredits the development of any business over the long run, attracting the hostility of consumers, driving away the valuable employees, and losing money with legal penalties.

Laura Nash presents an opposite example of macroeconomic approach of the same topic, suggesting a “covenantal” ethic, grounded on the idea that the capitalist system is based on a voluntary contract between society and business, both parties being responsible for certain mutual benefits. Reversing Sternberg’s thesis, which claims that the purpose of business is maximizing owner value over the long term, Nash alleges that the chief goal of business is “the creation and deliverance of value to a voluntary or democratically controlled marketplace. Concomitantly, it is the obligation of the marketplace (via buyers and the law) to see to it that business receives a fair return for such provision of value. Thus profit becomes the result of other first conditions rather than the first condition of business, and efficiency is a subset rather than driving definition of delivered value.”⁶

Starting from this premise it is not surprising that Nash also denies self-interest, which, put into practice, can stimulate neither morality, nor economic efficiency. The original intention of the

ethical theories built on self-interest was to find rational incentives for acting ethically in business; nowadays, these theories have been perverted into a justification for what Nash calls the "survival ethic", i.e., everyone for himself for the sake of the company's survival. She does not deny the normative consequences of enlightened self-interest, but only its basic motives; in her own words, "the model is theoretically right and attitudinally wrong."⁷ As long as the others' legitimate interests are considered only insofar this might serve self-interest, the idea of undertaking moral responsibilities is distorted by a deep selfish attitude of businesspersons. Because the long-term consequences of managerial decisions are hard to anticipate, thinks Nash, people in business prefer to have in view only the short-term effects of their decisions. Invoking the tough conditions of the market and the pressure of competition, they ignore the interests of stakeholders groups, insofar as this selfish attitude is not contrary to their interests. "Enlightened" or not, self-interest inadequately perceives moral obligations as unpleasant coercion, imposed on businesses by external factors, which are considered not because of certain inner beliefs, but only insofar as ignoring these obligations could be bad for profit. Taking this view, business ethics tends to reduce at mere legality, and keeping the law is the only concern of business.

The theoretical analysis of the relationship between maximizing profit and fulfilling social needs, as well as the choice of one of these two factors as main purpose of business or subordinated means for making profit is, of course, important. However, no matter what view we take in theory, in practice most economists and business leaders agree that an efficient management should undertake moral responsibilities. Yet this agreement is rather abstract and superficial, when we approach the matter in some detail. Few people deny that investors, managers, employees, suppliers, consumers or regulators do have certain moral responsibilities as *individuals*. Nevertheless, the concept of

corporate social responsibility raises many difficult questions, such as, “Can corporations have moral responsibilities? And “if they can, what is the difference between corporate responsibilities and the moral duties of the individuals working for corporations? Which are the most important moral responsibilities of corporations? And finally, how can society and public opinion determine corporations to satisfy their social responsibilities?” We shall try to outline a few answers to these questions.

Can corporations have moral responsibilities?

Obviously, commercial enterprises and individuals are not identical. But everything we know about ethics and morality is concerned with what individuals decide to do, in accordance with certain moral norms and values. That is why, before lining the moral obligations, which corporations should take on, we must see if they can have such obligations.

Incorporated enterprise is by far the dominant kind of organization in modern market economy. Of course, not all businesses are incorporated; there are many small family-owned firms or liberal professionals, as well as non-for-profit organizations – such as charitable funds, universities, NGOs, etc., but the strongest and the most visible business organizations are the big public companies, most often the first incriminated by the press and public opinion for their allegedly unethical actions. But can we speak of the moral responsibilities of a whole organization, or it makes sense to judge only the ethical behaviour of the individuals that are members of an organization? To answer this question, we should define first the essential traits of a corporation.

According to Crane and Matten, “a corporation is essentially defined in terms of legal status and the ownership of assets.”⁸ As fictitious legal entity, a corporation is typically independent from the individuals who invest in them, manage them, work in them, or

receive products and services from them. Corporations are separate entities in their own right, having perpetual succession: one corporation can survive the death of any individual investor, manager, or employee – on the condition to find new ones.

This legal status explains the second defining characteristic of corporations. Each corporation is the sole and independent owner of its assets. The offices, factories, machines, computers, cars, and all the other assets operated by a corporation, say Microsoft, are the exclusive property of Microsoft, not of its shareholders. Holding a share in a public company entitles shareholders to a dividend and some say in certain decisions affecting the company, but does not give them the right to take home any asset of the company – such as a desk or a computer. On the other hand, employees, suppliers, or customers deal with, and agree contracts with the corporation, not with shareholders.

These two essential traits of corporations entail a few significant responsibilities. (1) As “artificial legal persons”, corporations have certain *legal* rights and *social* responsibilities, just as the individual citizens. (2) Even though notionally owned by shareholders, since corporations hold their own assets, shareholders are not responsible for the debts or damages caused by the corporations; they have limited liability. (3) Managers and directors are a special kind of employees, hired by the shareholders to run business in their name. Generously compensated by the shareholders, boards of directors and managers have a “fiduciary” duty to serve the best they can the interests of the shareholders, using all their competence, talent, and experience to protect and increase the value of shareholders’ investment.

All of these premises demonstrate that corporations do have certain legal responsibilities, but this does not automatically mean that corporations also have *moral* obligations. One human being feels responsible for her actions, and experiences feelings of pride or shame for her right or wrong deeds, which cannot say about some artificial, inanimate entities like corporations. For this reason,

we should pay a closer consideration to the specific nature of corporate responsibility.

In 1970, right after the first wave of public interest in business ethics, future Nobel Prize winner Milton Friedman wrote a controversial article, defining the position of those who question the moral obligations and social role of corporations. Under the provocative title “The social responsibility of business is to increase its profits,” Friedman vigorously denied the notion that corporations could and should have social responsibilities. He based his argument on three clearly stated premises:

“Only people can have responsibilities,” says Friedman, because only humans possess moral conscience and feelings, make plans for the future in accordance to their interests, and act voluntarily to achieve their goals. “A corporation is an artificial person and in this sense may have artificial responsibilities, but ‘business’ as a whole cannot be said to have responsibilities, even in this vague sense.”⁹ As fictitious legal persons, corporations lack all of the essential traits of consciousness; consequently, they cannot assume any moral responsibility for their operations. Since corporations are set up by human beings, only their individual members hold responsible for what they are doing or not for a corporation. This idea has a good number of followers. Ronald Duska, for instance, claims that, “a company is not a person. A company is an instrument, and an instrument with a specific purpose, the making of profit. To treat an instrument as an end in itself, like a person, may not be as bad as treating an end as an instrument, but it does give the instrument a moral status it does not deserve; and by elevating the instrument we lower the end. All things, instruments and ends, become alike.”¹⁰

Managers are responsible only to shareholders. The legal regulations, enforced by the state, impose on the economic agents what society expects the companies to accomplish. As long as a corporation operates within the limits of the law, the only responsibility of the managers of the corporation is to make profit,

because this is the primary end of business organizations, and the shareholders employ managers precisely to reach this end. In Friedman's words, "A corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom."¹¹ Acting for any other purpose than maximizing profit, thereby serving the best interests of shareholders, managers would betray their professional responsibility to shareholders. Spending investors' money for social causes without their consent represents a theft from shareholders' pockets.

The state, not the corporations should solve social issues and problems. Managers cannot, and should not decide what is in society's best interest. This is the specific task of politicians and government. Corporate managers are neither trained and qualified to set and to achieve social goals, nor are they democratically elected to so. Assuming no matter what kind of social responsibility, corporate executives would be spending other people's money – shareholders, employees, consumers, etc., which means to impose taxes on these groups. But "the imposition of taxes and the expenditure of tax proceeds are governmental functions," civil servants and politicians being legitimated by elections, whereas executives are appointed by stockholders. If he decided to spend someone else's money for a general social interest, a corporate manager would act simultaneously as "legislator, executive and jurist."¹² On the other hand, managers are not experts in leading macroeconomic processes or in setting up social objectives; therefore, they can hardly know how to spend other people's money to serve the best social interest.

All three arguments stated by Friedman are strong and deserve a thorough examination. Let us analyze first the notion that a corporation cannot hold morally responsible for its actions, since

individuals make decisions and carry out actions. The key question seems to be whether a corporation is only a collection of individuals, working together under the same roof, or is it an independent entity both legally and ethically? This is an extremely difficult question as long as our moral language developed to apply only to what human individuals do, acting as free, mature, conscious, and responsible persons. Obviously, as De George points out, “moral language must be used with care and caution when applied outside the realm of human individuals and their actions. Special problems arise when considering the morality of corporations, nations, and people – problems that concern the meaning of moral terms, and problems that must be faced and clarified if we are to be clear about our moral judgments in these areas.”¹³

Friedman and his followers do have a point when they consider that corporations cannot act by themselves, like some metaphysical entities, separated from the people who work for them. Only the individual members of a corporation make decisions and act according to them and, consequently, only individuals can hold morally responsible for their decisions and actions. There is no doubt that the primary level of moral responsibility falls on those who belong to a corporation and act to fulfil their duties within the corporation. A business organization may be morally incriminated for its wrong actions only because, and insofar as, its members committed certain blameable acts. Moreover, a corporation could hold morally responsible for something only as long as its members have certain moral obligations in doing their jobs within the corporation. Starting from this undeniable fact, Milton and his school claim that it doesn't make any sense to speak of any corporate responsibility: whether the activities of a business organization produces certain effects which are ethically wrong, it is because certain individuals in the organization made some wrong decisions, determining through their authority other people to act in a wrong way. Corporations are inanimate systems, functioning like machines in accordance with certain impersonal, blind, and

unconscious rules, designed to achieve a specific purpose, namely to make and maximize profit for its owners.

However, corporations cannot seriously compare with mechanisms, because their components are not some inanimate entities, but human beings, who are aware of what they are doing as elements of the corporation, being able to disagree with certain corporate rules, to break them, or to change them. On the other hand, even a mechanism is much more than the total sum of its parts. The individual actions, taken by the members of a corporation, generate certain aggregated effects, which could not be produced by any single member of the corporation, who should be held the only responsible for those consequences. It would be rather awkward to say that only the individuals who work for a company, which, say, destroys the environment, beginning with the CEO down to the last employee, are responsible for polluting the air, the water, or the soil. Pollution is caused by the operations of the company as a whole, even though those operations involve a good number of individual acts. But those individual actions are not decided independently by each member of the corporation, to accomplish each employee's personal goals and interests, but are coordinated and synchronized in order to accomplish the goals of the corporation.

Critics of this view of the individual's responsibility for corporate acts have claimed that "when an organized group such as a corporation acts together, their corporate act may be described as the act of the group and, consequently, the corporate group and not the individuals who make up the group must be held responsible for the act."¹⁴ Normally, we credit the manufacture of a defective car to the corporation that made it and not to the individual engineers and workers who took part in the manufacturing process. And typically the law attributes the acts of a corporation's executives (when they act within their authority) to the corporation and not to the managers as individuals. But this does not change much, will claim those who deny corporate responsibility, invoking

the inability of ordinary language to make a clear distinction between the proper meaning of moral responsibility, which applies only to individuals, and a supposed, but inconsistent corporate responsibility. However, the matter is more complicated than a mere language problem. Within the modern corporation, responsibility for a corporate act often distributes among a number of cooperating parties. Corporate acts normally are brought about by several actions or omissions of many different people, all cooperating together, so that their linked actions and omissions jointly produce the corporate act. Let's say, for example, that one team of engineers designs a car, another team tests the new model, and a third builds it. One person orders, advises, or encourages something and others act on these orders, advice, or encouragement. One group knowingly defrauds buyers and another group knowingly but silently enjoys the resulting profits. One person contributes the means and another person accomplishes the act. One group does the wrong and another group conceals it. Who is morally responsible for such jointly produced acts?

The strongest argument for the notion of corporate responsibility is the simple fact that very often we have reasons to blame or praise the actions of a whole corporation, but we cannot do the same thing for each individual executive, manager, or employee doing his / her job within the corporation. "More often than not, however," says Velasquez, "employees of large corporations cannot be said to have 'knowingly and freely joined their actions together' to bring about a corporate act or to pursue a corporate objective. Employees of large-scale organizations follow bureaucratic rules that link their activities together to achieve corporate outcomes of which the employee may not even be aware."¹⁵ The engineers in one department may build a component with certain weaknesses not knowing that another department plans to use the component in a product that these weaknesses will render dangerous. A person working within the ongoing bureaucratic structure of a large organization is not necessarily morally

responsible for every corporate act he or she helps to bring about. If I am working as a secretary, clerk, or driver in a corporation, or if I become a stockholder in a corporation, then my actions may help the officers of the corporation commit a fraud. If I know nothing about the fraud or if I am in no way able to prevent it (e.g., by reporting it), then I am not morally responsible for the fraud.

Nevertheless, Friedman's followers will say there is always someone in a corporation who decided to initiate certain ethically wrong actions, even though they used their authority to involve many other innocent people, who have been used as ignorant instruments. If not everybody who made a contribution to a wrong committed by a corporation could be held responsible for it, this does not mean that the corporation as a whole made a wrong decision and put it into practice; some people with authority within the corporation always should be held responsible for the act. The defenders of corporate responsibility still have at least two arguments for their claim that it makes sense to speak of corporations as moral actors.

As said earlier, a corporation is more than the arithmetical sum of its individual members. A business organization is a functional system, which imposes on its members certain obligations beyond their own personal judgment and control. Apart from individuals taking decisions within companies, every organization has a *corporate internal decision structure*, which directs corporate decisions in line with predetermined goals. Such an internal decision structure gets manifest in various elements which, acting together, result in a situation whereby the majority of corporate actions cannot be assigned to any individual's decisions – and therefore responsibility – alone. The corporate internal decision structure is manifest in the organization chart as well as in the established corporate policies that determine the company's actions far beyond any individual's contribution. For example, if the strategic objective of one major automaker is to extend its market share producing and marketing cheap compact cars, the executives

are supposed to take the most efficient steps to achieve this goal, but not the liberty of questioning and changing at their will and overnight the company's strategy. All their decisions should subordinate to the strategic ends of the corporation, even when some of the executives and managers might have different views on the best ways to exploit the business opportunities of the moment. Managers should see facts from a different angle and make different decisions if the strategic ends of the corporation were, say, to protect jobs, to maintain a dominant position on the local market or to increase in short term the price of the company's shares on the stock exchange market.

On the other hand, all companies not only have an organized corporate internal decision structure but, furthermore, companies manifest a set of moral standards (beliefs, norms and values) that lay out what is generally regarded as right or wrong in the corporation – namely the *organizational culture*. These moral standards are widely believed to exert a strong influence on the individual's ethical decision-making and behaviour. Hence, many issues for which corporations receive either praise or blame can trace back to the company's culture. The next cases shows how the organizational culture can effectively make some honest individuals to act like ordinary crooks, contrary to their personal ethical beliefs, encouraging immoral behaviour of the employees.

BEECH-NUT APPLE JUICE AND BLIND CORPORATE LOYALTY

Founded in 1891 as a meat packing company, Beech-Nut expanded steadily into a large, diversified food concern, eventually including Life Savers, Table Talk pies, Tetley tea, Martinson's coffee, chewing gum and baby food. In 1969, Beech-Nut was taken over by the Squibb Corporation. Only four years later, a remnant of the old company was spun off and taken private by a group led by a lawyer, Frank C. Nicholas. The company that emerged from the Squibb umbrella sold

only baby food. One of its main products was the Beech-Nut apple juice.

In fact, apple juice is not especially nutritious (bottlers often fortify it with extra Vitamin C), but babies love it and find it easy to digest. Parents were pleased to buy a product that says "no sugar added" – as Beech-Nut advertised – and seemed to regard it as almost as pure and natural as mother's milk.

After an expensive and unsuccessful effort in the mid-1970s to market Beech-Nut as the "natural" baby food, the imperative to reduce costs became overwhelming. In 1977, when a Bronx-based supplier, who would later take the name Universal Juice, offered Beech-Nut a less-expensive apple-juice concentrate, the company abandoned its long-time supplier for the new source. The savings would never amount to much more than \$250,000 a year, out of a \$50 million-plus manufacturing budget, but Beech-Nut was under the gun.

No other baby-food company and no large apple-juice manufacturer ever bought significant quantities of concentrate from Universal – whose product had a suspect quality. The low price of the Universal concentrate, which eventually reached 25% below the market, could easily suggest that the product was diluted or adulterated.

In 1977, John Lavery was vice president of operations and manager of the plant in Canajoharie, New Jersey. After spending his entire career at Beech-Nut, he had risen to a position in which he managed almost 1,000 employees. Lavery was known as a figure of propriety and rectitude. He was a figure in the Methodist church, on the school board and in community organizations.

In 1979, Beech-Nut's financial condition had become so parlous that Frank Nicholas admitted failure and sold the company to Nestlé S.A., the Swiss food giant. In 1981, Niels Hoyvald was appointed chief executive of Beech-Nut. Like Lavery, he was a man with an exemplary background. Born and raised in Denmark, he had relocated to the U.S. and received his MBA degree from the University of Wisconsin. An ambitious man, Hoyvald had hoppedscotched across five companies before joining Beech-Nut as head of marketing in 1980, with the promise that he would be promoted to president within a year. Throughout his career, Hoyvald's watchword had been "aggressively marketing top quality products." He had turned around the faltering Plumrose Inc., a large food company, by emphasizing quality, and he viewed the job at Beech-Nut as a chance to do just that.

Like Lavery, Jerome LiCari was also every bit the local boy. Born and raised in neighbouring Herkimer County, he had worked in the Beech-Nut plant during summers home from college, and, after 14 years with Beech-Nut, he had achieved his greatest ambitions as head of research and development at Canajoharie factory.

In 1978, after initial testing indicated the presence of impurities in the new concentrate, Lavery agreed to send two employees to inspect the “blending facility” that Universal’s owner, Zeev Kaplansky, claimed to operate in New Jersey. The two reported that all they could find was a warehouse containing a few 55-gallon drums. The bizarre field trip aroused further suspicions among executives at the Canajoharie plant, but only one, LiCari, chose to act on them.

LiCari sent samples of the concentrate to an outside laboratory. The tests, he reported to Lavery, indicated that the juice was adulterated, probably with corn syrup. Rather than return the concentrate, or demand proof of its authenticity – as Heinz, the rival baby-food company would do three years later – Lavery sent down the order that Kaplansky sign a “hold-harmless agreement,” indemnifying Beech-Nut against damages arising from consumer and other complaints.

LiCari, however, was scarcely satisfied by Lavery’s legalistic approach. In April 1979, and again in July, he sent samples of the concentrate to a second laboratory, in California. The April test again found signs of adulteration, but the July test did not. LiCari concluded that Kaplansky had switched from corn syrup to beet sugar, an adulterant that current technology could not detect.

Once again, he approached Lavery, suggesting that Beech-Nut require Kaplansky to repurchase the concentrate. This time, Lavery instructed that the concentrate be blended into mixed juices, where adulteration is far harder to detect. Lavery and LiCari were locked in a hopeless conflict of roles, values, and personality. Lavery was the kind of guy who gives orders, and he had no trouble making up his mind. LiCari was too much of a scientist type to him, and not practical enough.

On August 5, 1981, LiCari circulated a memo to executives, including Lavery. “A tremendous amount of circumstantial evidence,” he wrote, makes for “a grave case against the current supplier” of apple concentrate. No matter what the cost, LiCari concluded, a new supplier should be found.

Several days later, LiCari was summoned to Lavery's office, where, as he told the jury, "I was threatened that I wasn't a team player, I wasn't working for the company, threatened to be fired." The choice could not have been more stark: capitulate, or leave.

Several weeks after his disastrous confrontation with Lavery, LiCari went to Beech-Nut's corporate headquarters in Fort Washington, PA, to appeal to Hoyvald – an uncharacteristic suspension of his faith in the chain of command. Hoyvald had been appointed president only four months earlier. Hoyvald, LiCari testified, "appeared shocked and surprised" at LiCari's report, and left him feeling "that something was going to be done and they would stop using it." Then, month after month, nothing happened. Finally, at a late-fall company retreat at a ski resort in Vermont, LiCari raised the issue with Hoyvald one last time. Hoyvald told him, he testified, that he was unwilling to fire Lavery. LiCari was now convinced that the company was bent on lawbreaking, and rather than acquiesce, he quit, in January 1982. His allies concerned with quality control remained behind, but evidently none was stubborn or reckless enough to press his point.

In 1982, several independent investigations, carried out by different organizations, led to the conclusion that Beech-Nut was involved in producing and selling adulterated apple juice, that contained little or no apple juice at all – only sugars, water, flavouring and colouring. The only legal and moral solution for Beech-Nut was a nationwide recall of the entire amount of fake apple juice on the shelves.

Anticipating that a seizure action was imminent, Hoyvald and Lavery made several decisions. They decided first to move the entire inventory of tainted juice out of the state's jurisdiction. On the night of August 12, nine tractor-trailers from Beech-Nut's trucking company were loaded with 26,000 cases of juice and taken in a ghostly caravan to a warehouse in Seaucus, N.J. One of America's most venerable food companies was fleeing the law like a bootlegger.

On September 1, Hoyvald managed to unload thousands of cases of juice from the Seaucus warehouse to Puerto Rico, despite the fact that the Puerto Rican distributor was already overstocked. Two weeks later, Hoyvald overruled his own lawyers and colleagues, who again suggested a recall, and ordered a feverish "foreign promotion;" under certain circumstances, American law does not prohibit the selling abroad of products banned at home. Within days, 23,000 cases were trucked at great expense from the company's San Jose, California, plant

to Galveston, Texas, where they were off-loaded for the Dominican Republic, where they were sold at a 50% discount. While Beech-Nut's sales staff shipped the evidence out to sea, its lawyers were holding the Federal and state agencies at bay, trying successfully to obtain a delay of the seizure action and the inevitable national recall.

By the middle of November, Hoyvald could boast, in a report to his superiors at Nestlé: "The recall has now been completed, and due to our many delays, we were only faced with having to destroy approximately 20,000 cases. We received adverse publicity in only one magazine." Further Federal and state investigations exposed details of the cover-up, as well as the fact that Beech-Nut had continued to sell the juice in its mixed-juice product for six months after the recall.

New York State sued Beech-Nut for selling an adulterated and misbranded product, and imposed a \$250,000 fine, by far the largest such penalty ever assessed in the state for consumer violations. In November 1986, The U.S. Attorney obtained indictments of Hoyvald, Lavery, Beech-Nut, and Zeev Kaplansky. Beech-Nut eventually settled by agreeing to pay a \$2 million fine. Both Hoyvald and Lavery have been sentenced to a prison term of a year and a day, plus fines totalling \$100,000.

Why did two competent and honest managers, Lavery and Hoyvald, give up decency and morality, becoming two lawbreakers? Hoyvald and Lavery seem to think of themselves as corporate patriots. Asked by one of the prosecutors why the entire inventory of concentrate was not destroyed once it came under suspicion, Hoyvald shot back testily: "And I could have called up Switzerland and told them I had just closed the company down. Because that is what would have been the result of it." One possible explanation could be the corporate culture of Nestlé, which values and praises above everything else competitive aggressiveness, imposing on its staff to do no matter what to protect and to increase the company's profits. Nestlé's corporate values determined Lavery and Hoyvald to adopt an unethical behaviour as the only way to satisfy the requirements of their superiors.

Jerome LiCari testified that in 1980 and 1981 he had expressed his concerns to six Nestlé officials, including Richard Theuer, who was then a vice president of Nestlé and would become Beech-Nut's president in 1986. In an extraordinary effort to clear its reputation, Nestlé brought all six officials to court, mostly from Switzerland, and

each one either contradicted LiCari's account or stated he had no memory of the alleged conversation.

Nestlé has defended its subsidiary's acts as vigorously as it could. The company has spent what sources close to the case estimate as several million dollars in defending the two executives, and has agreed to keep both men on the payroll – at annual salaries of \$120,000 and \$70,000 – until their current appeals are exhausted. Under the influence of Nestlé's corporate culture, both Lavery and Hoyvald refused a settlement and insisted on standing on trial, where they pleaded not guilty. Why? Both men were convinced that they committed nothing more than a mistake of judgment, encouraged by the legalist approach of the issue – specific for Nestlé's corporate culture.

LiCari's behaviour, on the other hand, proves that the corporate culture is not a irresistible force. No matter how strong the influence of corporate culture might be, the individual always should keep his own judgment, his free will, and his moral standards, acting in accordance with the demands of his moral conscience. Ultimately, the influence of corporate culture can explain and, more or less, mitigate one's unethical behaviour, but it never should completely excuse one's moral failure.¹⁶

Similar conclusions come out of another case, that clearly illustrate the role organizations play in shaping individuals' behaviour and how even sound moral fibre can fray when stretched too thin.

SEARS, ROEBUCK & CO AUTOMOTIVE SERVICE

In 1992, Sears, Roebuck & Company was inundated with complaints about its automotive service business. Consumers and attorneys general in more than 40 states had accused the company of misleading customers and selling them unnecessary parts and services, from brake jobs to front-end alignments. It would be a mistake, however, to see the situation exclusively in terms of any one individual's moral failings. Nor did management set out to defraud Sears customers. Instead, a number of organizational factors contributed to the problematic sales practices.

In the face of declining revenues, shrinking market share, and an increasingly competitive market for undercar services, Sears

management attempted to spur the performance of its auto centres by introducing new goals and incentives for employees. The company increased minimum work quotas and introduced productivity incentives for mechanics. The automotive service advisers were given product-specific sales quotas – sell so many springs, shock absorbers, alignments, or brake jobs per shift – and paid a commission based on sales. According to advisers, failure to meet quotas could lead to a transfer or a reduction in work hours. Some employees spoke of the “pressure, pressure, pressure” to bring in sales.

Under this new set of organizational pressures and incentives, with few options for meeting their sales goals legitimately, some employees’ judgment understandably suffered. Management’s failure to clarify the line between unnecessary service and legitimate preventive maintenance, coupled with consumer ignorance, left employees to chart their own courses through a vast gray area, subject to a wide range of interpretations. Without active management support for ethical practice and mechanisms to detect and check questionable sales methods and poor work, it is not surprising that some employees may have reacted to contextual forces by resorting to exaggeration, carelessness, or even misrepresentation.

Shortly after the allegations against Sears became public, CEO Edward Brennan acknowledged management’s responsibility for putting in place compensation and goal-setting systems that “created an environment in which mistakes did occur.” Although the company denied any intent to deceive consumers, senior executives eliminated commissions for service advisers and discontinued sales quotas for specific parts. They also instituted a system of unannounced shopping audits and made plans to expand the internal monitoring of service. In settling the pending lawsuits, Sears offered coupons to customers who had bought certain auto services between 1990 and 1992. The total cost of the settlement, including potential customer refunds, was an estimated \$60 million.¹⁷

To conclude, Friedman is right when he claims that individuals can have moral responsibilities in the full meaning of the word. He is wrong, nevertheless, in denying the possibility of corporations to have their own ethical responsibilities, beside the undeniable legal

ones. Indeed, we might say that these corporate moral responsibilities are somehow ethical obligations of a second order, because corporations can act only through the actions of their individual members. Nonetheless, corporations do act like autonomous moral agents: they operate to attain certain goals, they possess a specific corporate internal decision structure, and develop a particular corporate culture. All these elements can define only at the organizational level, and they do not directly depend on the moral views and values of the individuals who work in a corporation; on the contrary, they strongly influence the moral decisions and behaviour of the people who wish or have to work for a large public company. Consequently, corporations can and do have certain moral responsibilities of their own – which does not mean that corporate responsibility gives away the moral responsibility of the individuals.

Why should corporations take on social responsibilities?

Once accepted the idea that corporations can have moral responsibilities, Friedman's second argument, claiming that managers are responsible only to shareholders, should question in its turn. If corporations take on social responsibilities, executives should be held responsible not only to shareholders – who expect from managers high financial performances and substantial dividends, but also to different stakeholder groups, such as employees, consumers, suppliers, local communities, etc. Once again, Friedman and his followers deal with clear and undeniable facts: no one could seriously question the fiduciary responsibility of corporate executives to stockholders. On the contrary, the advocates of corporate responsibility have the difficult task to elaborate theoretically their object of investigation. For instance, they have to answer Friedman's provocative, but essential question:

Why should corporations undertake both financial and social responsibilities?

The most convincing answer to this question bases on the conceptual frame of enlightened self-interest: the corporation takes on social responsibilities insofar as doing so promotes its self-interest. Practice has proved that ignoring the expectations and demands of different stakeholder groups could be bad for profit over the long term. A few examples make this point very clear.

Corporations perceived as being socially responsible enjoy the benefit of satisfied and loyal customers, which might be a solid competitive advantage, whereas a bad reputation of irresponsibility can be very costly. Corporations, such as Nike, Nestlé, ExxonMobil, and many others lost money after long lasting consumer boycott, caused by a negative public perception of their business practices. One should recall Nike's huge profits based on child labour and sweatshops in the Third World countries; unfair market policies in Africa for Nestlé's infant milk formula; the refusal of ExxonMobil to sign up (and active lobbying against) the Kyoto global warming protocol. More and more, employees are attracted to work for corporations perceived as being socially responsible, and some of them are even more committed to such corporations, which might be another important competitive advantage. Voluntary commitment of corporations to social programs could keep legal regulations out of business activities, ensuring greater corporate independence from government. All in all, making a positive contribution to society as a whole might be regarded as a long-term investment in a more equitable, safer, and better educated community, which benefits the corporation insofar as it creates an improved and stable context in which to do profitable business.¹⁸

These are strong *economic* arguments in favour of corporate social responsibility, which can explain why nowadays most business organizations take for granted the notion that a competent and efficient management should take on social responsibilities.

But this is not the point. In fact, Friedman does not deny the utility of social involvement of corporations. He reasonably points out that, as long as self-interest only motivates social involvement, we cannot speak of a true ethical commitment. Because of its selfish motivation, corporate responsibility might be discredited as a PR exercise, intended to polish the public image and the good reputation of a company for the sake of their financial benefits. From this point of view Friedman is right, at least if we subscribe to the Kantian notion that the moral value of an action essentially depends on the agent's intention to do what is right – the morality of an action being tested by its conformity with the categorical imperative. The ethical issue is not whether profits increase as consequence of some actions for the benefit of stakeholder groups, but whether the original motive of these actions is the greed for profit or a genuine respect of the legitimate interests of various social categories. Unfortunately, it is difficult, if not quite impossible to be certain about the corporate motives. Moreover, “despite numerous academic studies, a direct relationship between social responsibility and profitability has been almost impossible to unambiguously ‘prove’. Even though the overall weight of evidence seems to suggest some kind of positive relationship, there is still the issue of causality,” say Crane and Matten.¹⁹ When successful companies engage in corporate social responsibility programs, it is an open question whether these programs make a contribution to the financial success of those companies or rather the financial success permits big companies the “luxury” of corporate responsibility.

To reject Friedman's view, it is important to see if there are some *moral* arguments in favour of corporate responsibility. Such arguments might be found if, and only if, we agree upon the idea, which I tried to demonstrate, that, as entities in their own right, corporations operate as genuine independent moral agents, being held ethically responsible for their business activities.

First, no one can deny that corporations cause social problems; consequently, it is, at least partially, their moral responsibility to solve the social problems they caused and to prevent causing further social problems. By funding technological progress and stimulating increased efficiency, corporations make obsolete certain professions, thereby causing growing unemployment and a massive transfer of workforce from the areas affected by the scarcity of jobs to overcrowded boom areas; corporations pollute the environment, intensively exploit natural resources, etc. It is not ethically fair if corporations let others to pay the costs of such negative consequences, and to keep the entire profit for themselves.

Second, as powerful social actors (if we consider their financial, technological, and human resources), large corporations should use responsibly their power and resources in society. Let's say a multinational company has accumulated huge financial resources in its home country, exploiting the hard work of its competent and loyal employees, being for a long time encouraged and protected by government, etc. The corporation does not act ethically when, for the sake of an increased profit, decides to relocate in a Third World country, where labour is much cheaper and the environmental legislation is weaker, not caring at all about its back home employees who lose their jobs.

Third, all corporate activities have various social impacts, which encompass much more than their specific business operations. Companies sell products and services to make profit, of course, but their merchandise may be useful to the consumers, satisfying their needs and wants, or not: many products are unsafe, unreliable, or too expensive. Tobacco, alcohol, fire-arms, pornography, junk food and many other products make obscene profits for the corporations that manufacture and sell such products, but people question their social impact more and more virulently. Drug companies make fabulous profits. Some of their products are of great help to sick people, and this is a highly appreciated service to society. Yet other products are superficially tested, inducing

hazardous side effects or even killing some patients, whereas other drugs, even though very efficient in curing various diseases, are too expensive for many people who cannot afford them. Corporations create jobs, and this a great service to society; but some jobs are underpaid, expose the workers to professional hazards and accidents, overwork and stress; there are employers who discriminate minorities, tolerate sexual harassment, and do not give up employment-at-will practice. Corporations are engaged in a complex network of relationships of cooperation with suppliers, business partners, banks, advertising agencies, etc., and their activities have a strong impact on the financial performance of these economic agents. On the other hand, there is tough competition among rival companies. Competition is the driving force of market economy insofar as it stimulates technological progress, increasing the variety of better goods and services on the market, offered at cheaper prices. A fair, "clean" competition rewards the best companies and drives away the inefficient ones. Nevertheless, unfair competitive practices can affect negatively not only the interests of the tricked competitors, but also large masses of consumers, suppliers, and employees who depend on the operations of the losers.

Finally, corporations cannot operate relying exclusively on the financial resources of shareholders; their mere existence depends on several other constituencies or stakeholders. Without investors, no business – that's true; but how could a business achieve its aim – profit – in the absence of suppliers, employees, consumers and other social groups, involved indirectly in the economic environment, such as people working in education, health care, law and order etc.? Hence, corporations have a moral duty to take into account the interests and goals of these stakeholders as well as those of shareholders.

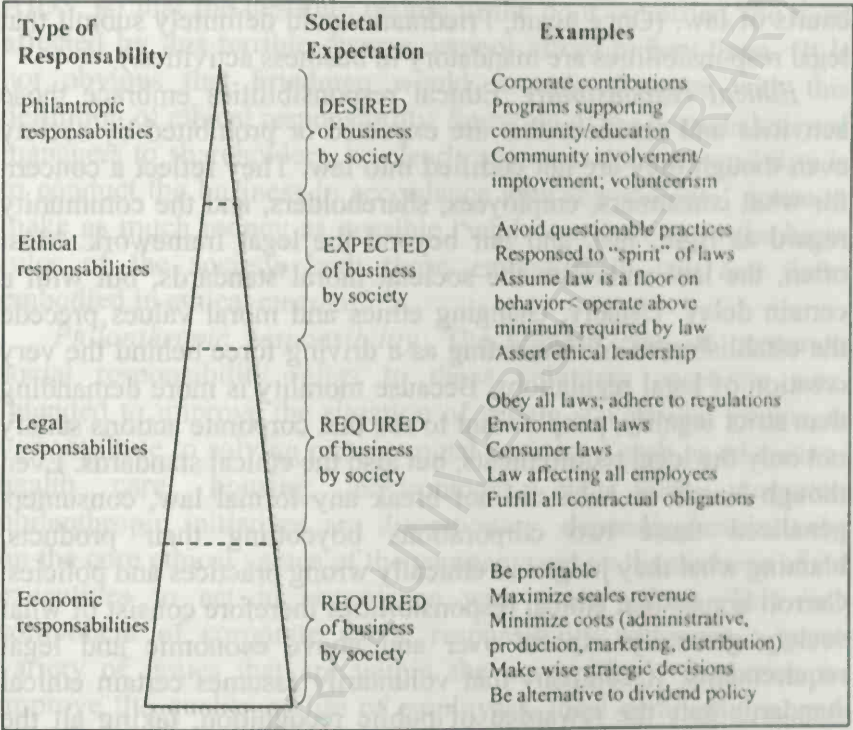
Corporate responsibilities

Granted that corporations can have social responsibilities and there are reasons why corporations should take on such responsibilities, the next question naturally refers to the nature of corporate social responsibilities. The classical conceptual framework of the main types of corporate responsibilities is the model elaborated by Carroll in 1979. Subsequently, Carroll refined the model together with Buchholtz. This model is depicted in the figure below.

Carroll distinguishes four types of corporate responsibilities – economic, legal, ethical, and philanthropic. He presents these different responsibilities as consecutive layers within a pyramid, but he repeatedly specifies that “true” social responsibility requires the meeting of all four levels consecutively. Hence, Carroll and Buchholtz offer the following definition: “Corporate social responsibility encompasses the economic, legal, ethical, and philanthropic expectations placed on organizations by society at a given point in time.”²⁰

Economic responsibility. Notionally, shareholders are the owners of corporations and they expect a high return of their investments. Corporations also have employees, who want safe jobs and fair wages. They look for customers, who demand high-quality products and services at a fair price, etc. This is by definition the reason why businesses operate in society and, consequently, the first responsibility of business is to be profitable. The first layer of corporate responsibility is the basis for all the subsequent responsibilities. Considering this fact and the very nature of business, Carroll regards the satisfaction of economic responsibility as one required of all corporations. (After all, Friedman has a point emphasizing that the primary concern of managers should be profit, since economic failure discredits the mere possibility of a corporation to take on any other kind of social responsibility.)

Four-Part Model of Corporate Social Responsibility²¹



Legal responsibility. The legal regulations define the rules of the economic game, normally enforcing certain moral beliefs and requirements of a significant majority of citizens. Each company is supposed to comply with the law, running its business activities in perfect conformity with all the legal norms in effect at a certain moment. Legal responsibility of corporations is also required by society, on good ground, because, as fictitious legal persons, corporations are sanctioned by legal authorities, with a definite purpose, namely to operate in view of satisfying certain human needs. Corporations operate under a social contract: they may, according to the law, to do business and to make profit, insofar as they serve social interest. Illegal corporate activities occur

frequently, and at least some of them are severely punished by the courts of law. (Once again, Friedman would definitely submit that legal responsibilities are mandatory in business activities.)

Ethical responsibility. Ethical responsibilities embrace those activities and practices that are expected or prohibited by society even though they are not codified into law. They reflect a concern for what consumers, employees, shareholders, and the community regard as right, just, and fair beyond the legal framework. Most often, the law embodies the societal moral standards, but with a certain delay. Usually, changing ethics and moral values precede the establishment of law, acting as a driving force behind the very creation of legal regulations. Because morality is more demanding than strict legality, people want to see that corporate actions satisfy not only the legal requirements, but also the ethical standards. Even though Nestlé or Nike did not break any formal law, consumers penalized these two corporations boycotting their products, blaming what they judged as ethically wrong practices and policies. Carroll argues that ethical responsibilities therefore consist of what society generally expects over and above economic and legal requirements. A company that voluntarily assumes certain ethical standards gets the rewarded of public recognition, taking all the benefits of a good ethical reputation. For example, Merck and Co. received a high appreciation after initiating a research project that eventually developed an efficient and cheap drug, Mectizan, capable of curing a terrible tropical disease, river blindness. Since 2004, Merck has produced and distributed for free around 40 million pills all around the Third World. But the same company has been blamed by the public opinion when Merck tried to deny for years that another of its drugs, Vioxx, was extremely hazardous for certain categories of patients, many of them killed, not cured by Vioxx. Eventually, Merck admitted the criticism and the company took the drug out of shelves. Merck also suffered the consequences of a bad ethical reputation because, in line with the other giants in the drug industry, refused to give up extremely high profit. The

company kept very high the price of its products designed to cure AIDS, so that the destitute people in the poor countries, the most affected by this terrible disease, cannot afford to buy them. (It is not obvious that Friedman would strongly disagree with this definition of ethical responsibility. Speaking of the responsibility of managers to shareholders, he clearly says that this responsibility is to conduct the business in accordance with shareholders' desire to make as much money as possible "while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom."²²

Philanthropic responsibility. The highest level of corporate social responsibility refers to those voluntary corporate acts, intended to improve the situation of certain stakeholder groups or to contribute to solving certain social problems, such as education, health care, housing, environment, etc. Such corporate philanthropic initiatives are discretionary, depending exclusively on the core ethical values of the company and on the decision of its executives to act in accordance with these values. This last component of corporate social responsibility addresses a great variety of issues that are within the corporation's discretion to improve the quality of life of employees, local communities, and ultimately society as a whole – such as charitable donations, the building of recreation facilities for employees and their families, support for local schools, or sponsoring of art and sports events. In rare cases, people salute enthusiastically unusual corporate altruism and generosity, which stay close to ethical heroism – as the next case illustrates.

THE MALDEN MILLS INCIDENT

The fire, started perhaps by an exploding boiler, quickly enveloped one building, then spread to another, and then to a third. The main manufacturing buildings of Malden Mills reduced to rubble on the night of December 11, 1995. Malden Mills had been founded in 1906 by

Henry Feuerstein, the grandfather of the present owner, Aaron Feuerstein. In 1956, the business moved from Malden to Lawrence, Massachusetts. By 1995, most of the other fabric companies in Lawrence had closed or moved South or abroad to take advantage of cheaper labour costs. In the 1980s, Malden Mills had gone bankrupt when the market for the fake fur, which it produced, dried up. Yet, in addition to continuing its production of upholstery fabric and fleece, the company developed a new product, Polartec, and made a successful recovery. Polartec is a synthetic fleece, made from recycled plastic bottles, that is light, warm, and resilient and used in sports- and outdoor wear made by such companies as Eddie Bauer, North Face, L. L. Bean, Patagonia, and Land's End.

The night of the fire Aaron Feuerstein had been celebrating his seventieth birthday, when he returned home to learn the news. He rushed to the scene of the fire and with the help of the fire fighters and some of his employees managed to save part of the one remaining production building. He was determined to rebuild as soon as possible. His other options, pressed by some of his advisors, were to close down and retire on what he could get from insurance, or to rebuild elsewhere. Feuerstein rejected those options and decided, against the advice of some of his staff, that he would not only start rebuilding immediately, but that he would also give each worker a \$275 Christmas bonus as planned and announce that he would continue to keep them all on the payroll for at least 30 days.

The plant was insured for \$300 million. But the insurance company would not make payments until it had determined the cause of the fire and had concluded that it was not arson. Feuerstein needed the insurance money to rebuild, but he could not wait for it to come through. Thus, he took out \$100 million in loans, used his own money, and started the process immediately. His workers rallied around him. When the first 30 days were up, he guaranteed all his workers another 30 days' wages, whether or not they worked. And he did this a third time as well. Their wages were among the highest in the industry, averaging \$25.50 per hour. Within three months, he had rebuilt the plants sufficiently so that he had not lost his major customers for Polartec and had most of his employees back to work. He was unable to reopen one upholstery division, however, and reluctantly had to let go 400 out of his 3,100 employees, 2,320 of whom were employed at the Lawrence location. Even then, however, he continued the health

insurance for those 400 workers for an additional three months, opened a workers' centre to help them, and gave them priority on call-back rights, so they would be the first ones hired when he was able to take on new employees.

His treatment of his employees received national recognition. President Clinton invited him to sit next to the First Lady at his State of the Union Address. Newspapers carried Feuerstein's story. He was awarded honorary degrees by Yeshiva University and Boston University. He had a glowing segment on *60 Minutes*. An article in *Fortune* commented, "Malden Mills owner Aaron Feuerstein was both ridiculed and canonized when he kept his 1,000 employees on the payroll after a fire burned down his factory last Christmas. But now he's proving that treating workers well is just plain good business."

It is not clear if the same thing would have been said about him if his business had failed instead of succeeding, even though his treatment of his workers would have been the same. Nor was it by any means certain for some time that he would succeed in his attempt to rebuild. By February, the insurance company had paid only \$9 million advance. Paying his workers' salaries despite the fact he had no work for many of them to do cost him \$13 million. In the first quarter following the fire, Malden Mills posted a quarterly loss of \$50 million. Feuerstein managed to keep his major Polartec customers, but he lost some of his customers for his upholstery line. Succeed he did, however, at least initially. On June 6, 1997, the insurance company finally agreed to pay the full \$300 million in fire damages. Rebuilding the plants with state-of-the-art equipment cost an additional \$40 million. But the new factory was dedicated on September 16, 1997, and sales were up 40% since the time of the fire, with productivity up 25%. The last 70 of the terminated workers were rehired within months thereafter. In addition, Malden Mills has enjoyed a publicity and advertising bonanza and has generated an inestimable amount of goodwill not only on the part of its workers but also of its customers and the general public.

Feuerstein claims he did what he had to do. He said that he could not turn his back on either his employees or the city of Lawrence. His treatment of his employees made them fiercely loyal to him and they worked enormously hard helping him to rebuild his plant in record time. Despite the fact that his decision to keep his employees on the payroll for 90 days after the fire, whether or not there was work for them, was controversial, it was lauded as good business. Whether the company can

continue the practice and compete successfully against the increasing competition that uses lower cost labour abroad remains to be seen.²³

According to Carroll, philanthropic responsibilities are merely *desired* of corporations without being expected or required, making them somehow less important than the other three categories. "This category of responsibility might be deemed 'corporate citizenship'."²⁴

At first glance, Friedman and his followers would strongly disagree with philanthropic responsibilities. As a matter of fact, the only clear statement made by Friedman is concerned with the right of managers to decide at their discretion to spend shareholders' money for philanthropic projects without the shareholders' consent. He definitely admits the right of the owners to spend their money on charity and other noble social projects, but he emphatically denies that managers, in their position of being employed by the shareholders who own the corporation, are in their right to make such philanthropic decisions without the approval of their employers. This still is the dominant position held by most economists and business leaders. Even though the decision of Merck's executives to produce and distribute for free Mectizan eventually proved to be a winning strategy, the business milieu questioned their decision, precisely because it was made without the consent of the general assembly of the shareholders. On the other hand, Aaron Feuerstein could choose ethical heroism because he was both the owner, and the CEO of Malden Mills; if the company were incorporated, it is highly improbable that he could make such a decision only by himself. And we should add that, a few years after the famous and much acclaimed Malden Mills incident, the company went into bankruptcy. Now it is owned and operated by its former creditors, led by investment giant GE Capital, which adopted a completely different strategy, laying off most of the employees and planning to relocate in the Third World, as most manufacturers in the American textile industry already did,

many years ago.²⁵ As it seems, moral heroism has heavy costs in the world of business.

Corporate responsibility: theory and practice

Carroll's four-part model of corporate social responsibility enjoyed a large recognition due to its certain qualities. It suggests a clear structure of different corporate responsibilities. It explains intelligibly the specific essence and social function of each layer placed in Carroll's pyramidal pattern. Last but not least, it arranges the four types of corporate responsibilities in a hierarchical order, acknowledging that the upper layers of ethical and philanthropic responsibilities could be accomplished only by profitable corporations, with an impeccable legal record. As we tried to suggest, this theory of corporate responsibility does not radically conflict with the conservative view of Friedman and his school. All it does is to enlarge the perspective, so that to encompass more than the strict internal area of corporate operations – as neoliberals often prefer to do, projecting the business operations at the social scale.

Of course, there is no perfect theoretical model. Carroll's theory has its limits. For example, as long as the philanthropic responsibilities are discriminatory or optional, it does not make sense Carroll's claim that "true" corporate social responsibility requires the meeting of all four levels consecutively. However, the main limitation of the four-part model is that it does not adequately address the problem of possible conflict between two or more responsibilities. For example, the threat of plant closures often raises the problem of balancing economic responsibility, which requires a company to remain efficient and profitable, with ethical responsibility to provide secure jobs to employees. Since profitability seems to be the primary corporate responsibility, it is suggested that the first option should be to resize a corporation for the sake of efficiency – a solution that Friedman and his followers would be glad to approve of. For instance, when Renault

announced its decision to close its Belgian factory at a cost of 3,100 jobs, the Belgian government denounced the move as “brutal”; yet Renault saw its share price immediately jump by 13 percent.²⁶ A few years ago, when Nokia decided to close its factory near Bochum, in former East Germany, and to move it in Romania, the German government vehemently protested and accused Nokia of unfair behaviour, suing the multinational giant. In 2011 it came our turn to protest against Nokia Managers to relocate the plant somewhere in Asia. Another problem with Carroll’s theory is that it considers almost exclusively the U.S. specific context. Crane and Matten reveal a few significant differences between the American view of corporate responsibility and the European perspective.

The notion of corporate responsibility has been intensively developed by the American theorists, who still keep a dominant position in this field of research. The concept of corporate responsibility was less influential in Europe, given certain significant differences between the cultural, social, and business environment from the two shores of the Atlantic. All the four types of corporate responsibility defined by Carroll and Buchholtz can find both in the U.S. and Europe, but in different configurations.

The aspect of *economic responsibility* in the U.S.A. strongly focuses on profitability of companies, the chief duty of managers being to protect the interests of the shareholders. The European model of capitalism is somehow different. This model defines economic responsibility more widely, tending to emphasize the economic responsibility of corporations to employees and local communities as well. For example, many German companies, such as the engineering conglomerate Thyssen, keep running their unprofitable operations in eastern Germany, because the abandon of this part of the country, with its stumbling economy, is judged as socially unacceptable and would stain the public image of the corporations.

Given the prominent role of the state in regulating corporate activities, in Europe the *legal responsibility* appears as the basis of

the other types of social responsibilities. Continental European thinking tends to see the state as the necessary and legitimate authority called upon to enforce the socially accepted rules of the game. Applied impartially, the legal regulations eliminate ambiguity and simplify decision making, insofar as each economic agent has a clear picture of what is legally mandatory, permitted, or forbidden. On the contrary, in the American view, governmental regulations are more likely to assess as unpleasant interference with private liberty. Consequently, the American corporations strive to protect their freedom of enterprise through self-regulation, trying to keep the state as much as possible out of their business operations.

The European context pays a special attention to the ethical responsibilities of corporations. In comparison with the Americans, people in Europe are more suspicious about the large multinational corporations and their ethical standards, which Europeans keep under constant scrutiny. Even if large corporations can show they are running properly in economic and legal terms, there is a constant request in the European context that especially large multinationals should constantly reaffirm their social legitimacy. Thus, genetic engineering, animal testing, the negative impact of modern industry on the natural environment, and many other issues have always inflated public debate more than in the other parts of the world. For instance, public outcry regarding the issue of genetically modified food and its labelling became a major issue for European corporations to deal with in the last decade, yet had little impact in the U.S.A.

Probably the most significant differences between the American and the European views upon corporate responsibility can find in connection with the philanthropic responsibility. Since the American companies always tried to limit state intervention in economy, and in part have succeed in keeping government out of business, as well as due to a stimulating tax system, there is in the U.S. a long tradition of philanthropic actions taken on by large corporations. Discretionary acts of successful companies or

extremely rich capitalists, such as Bill Gates, Warren Buffett, or George Soros, are not unusual in the U.S. On the contrary, most of the successful American companies are funding a large variety of social, educational, and environmental programs meant to solve certain problems and to support scientific research, art, sports events, etc. We can see a quite different picture in Europe. Since income and corporate taxes in Europe are generally higher than in the U.S., and given the more prominent role of the state in the European economy, funding of art, higher education, health care, or local community services, etc. have never been regarded as a task for corporations, but as a governmental responsibility. Similarly, labour laws in Europe are more protective for the employees, and grant social benefits to workers and their families, so that improving the social status of the workforce is primarily a responsibility of government, not of “philanthropic” corporations.²⁷

How does Carroll’s model apply to the Romanian economy? Regarding the economic responsibility, in the context of present world financial crisis it is difficult to make a general description. There are considerable differences of financial resources between the local divisions of multinational corporations and the national companies, between large companies and the small firms, or between different sectors of economy. Most of the local companies and small firms desperately fight for mere survival. Insofar as just staying in business is at stake, naturally these economic agents focus exclusively on their economic responsibility, forgetting about the upper layers in Carroll’s model. As for the local divisions of multinationals, their managers are primarily responsible to their shareholders who, in great part, if not all of them, are foreign investors. Analyzing the economic context previous to the present crisis, it is rather obvious that a significant majority of our Romanian companies have not been seriously concerned with elaborating and applying long-term strategies, able to promote financial growing. Too many local investors and managers have been, and still are looking for rapid shots and immediate profits for

themselves, not caring much about the competitiveness of their products or the stability of the jobs on their payroll. With a few notable exceptions, most of the richest Romanian capitalists made fortunes very quickly through speculative transactions, and some of them wasted their financial resources on indecent luxury, impressive office buildings, or eccentric spending on PR actions, with the only purpose of making them notorious and influent.

Unfortunately, the most serious problem of foreign and local investors in Romanian economy is the legal responsibility. It is no secret that keeping the law in our country is not something common, but rather the exception, for various reasons. First, we still lack a solid culture of legality, not only in business activities, but in all compartments and levels of society as a whole. From the top to the bottom of our social system, too many people do not consider legal regulations as a normative frame, which protects their rights. On the contrary, they see legal regulations as a network of burdens, which the ordinary citizen has to take upon his shoulders for the benefit of an inefficient or even hostile state, which serves not the public interest, but the interests of the rich, powerful, and influential minorities. It is sad to say that, at least in part, this perception is correct. Second, the business environment in our country still is perverted by unfair practices, such as political interventions, tricked bids, toleration for smuggling or tax evasion, bribery, etc., which disturb a fair competition. In the context of this unfair competition, too many companies and firms have to choose between acting legally and bankruptcy; as a result, we have extremely large black or grey areas in our economy, which force more and more companies to break the law if they wish to survive. Third, even those few companies which impose on themselves to act legally are confronted with almost insuperable problems, because the legal regulations change too often; many of them are inconsistent and allow dubious exceptions; finally, due to the endemic corruption in the administration and the legal system, even this week and imperfect legislation does not apply impartially and

predictably. This refusal or incapacity of too many companies operating in our country to take on their legal responsibilities represents, undoubtedly, the most serious challenge and the heaviest handicap of Romanian economy. As long as we shall not be able to enforce a rational and socially accepted legislation, the basic rules of market economy will keep on being distorted and the competitive force of our outdated “robber baron” capitalism will be extremely weak, depriving our society of the necessary resources for a substantial improvement of education, health care, infrastructure, and so forth.

Naturally, as long as we have a big problem with our poor economic accomplishments, as well as with a weak legality, it is hard to expect much ethical responsibilities assumed by the Romanian companies. There is no doubt that this aspect in Carroll’s model is not empty. Especially the divisions of multinationals, applying the management strategies and moral standards of their mother corporations, have initiated various social programs, in education, environment, training of the workforce, etc. Less strongly, some Romanian companies began to consider their involvement in solving certain local problems. However, beside a poor economic base and a weak legality, another factor makes corporate ethical responsibilities a still minor problem in our economy. After so many decades of socialism, the expectations of most people for morality in business are extremely vague, if not totally absent. Instead of demanding corporations and firms to operate ethically, a whole mass of Romanians believe that business is by definition dirty and immoral, not being at all surprised by too many proofs that their judgment is correct. Because of their poor financial resources, most of our consumers look for cheap merchandise, being less interested in the quality, safety, and reliability of products they buy, and not at all preoccupied if those products have been manufactured in sweatshops, in factories that destroy the natural environment, under the protection of dictatorial and criminal political regimes, and so on. Poverty does not allow most Romanian consumers to threaten unethical companies with

boycotting their products. On the other hand, growing unemployment, the generally low level of salaries, and the scarcity of governmental means to assist the unemployed and to fund their professional reconversion, force the Romanian employees to accept underpaid, unsafe jobs, hazardous work environments, overwork and unethical practices, such as gender or ethnic discrimination, sexual harassment, etc. For the time being, the Romanian employees are almost entirely concerned with wages, benefits, and security of their jobs; they cannot afford to penalize unethical employers by leaving their jobs and looking for better conditions offered by more decent employers.

Paradoxically enough, it looks like philanthropic responsibility is better illustrated in Romania than the other three types of corporate responsibility. However, this is only an illusion created by the media channels. Only a small number of rich capitalists, front page characters, can afford charitable acts, for the sake of notoriety. Scholarships for poor, but brilliant students make one isolated example. In the rest, we have church builders, owners of soccer clubs, investors in K1 and boxing fights, beauty contests and fashion shows, or donations for sick people, live on television, of course! This is an upside-down pyramid, ugly structured and made up of bad smelling raw material, that shows us how far we must move forward toward a decent, civilized economy and society.

Conclusions

Long time ago, Milton Friedman wrote a short article in which he expressed a few clear and consistent ideas, based primarily on facts and typical situations met in the market economy. From these facts, he extracted with impeccable logic the ethical consequences of his premises, addressing in a clear language to businesspersons and managers. Most of his critics are academics and journalists, who claim to speak for civil society, public opinion – if not for the whole humanity – using a sophisticated and artificial language. The advocates of corporate social responsibility have produced in the

last decades a vast literature and a complex conceptual framework, trying to contradict those few pages written by Friedman. They flatter themselves with the obvious moral superiority of their long discourse, but are reluctant to submit that this long discourse is not immune to utopian ideas and left-wing bias, sometimes completing their analysis of facts with wishful thinking.

Nevertheless, no matter what theoretical principles lay as first premises, they all lead to the same practical conclusion: an intelligent and efficient strategy of making a corporation highly profitable demands a constant consideration of what stakeholders expect from corporations. Conceptual and ideological debates focus on teleological priorities: one company should care about stakeholders' legitimate interests and moral standards in order to maximize profit on long term versus being "reasonably" profitable, serving the best public interest. Yet given the fact that practical conclusions are identical, we could be tempted to judge this dispute as one rather scholastic and less relevant.

From an ethical point of view, this judgment is fallacious. The motives of our actions are extremely important and, as Kant demonstrates, the selfish actions have no ethical, but only an instrumental value. The way out of this unfruitful dispute could find by stating a clear definition of our theoretical perspective. At the microeconomic level, Sternberg is probably right. A businessperson is not a social strategist concerned with the progress of mankind and with the eradication of all social problems and all forms of injustice. His or her job is to run a business as efficiently as possible, which means to maximize profit by legally selling on a competitive market socially desired goods and services. At the macroeconomic level, Nash is also right. As a distinct social category, businesspersons are the cells of an organism whose main function is not to give certain individuals the chance to make a profit exploiting other people, but to satisfy the needs and wants of the whole society. Their job is to make those decisions that promise to fulfil the public expectations, profit being the deserved reward for their performance.

This dilemma seems to be insolvable as long as, appealing to an excessively abstract reasoning we put apart in theory what in reality stays together: the businessperson as *homo economicus*, and the businessperson as mere human being. Before being a businessperson, the capitalist is a human individual, with his own limits and her own moral standards. There are businesspersons who cherish high ethical values, which determine them to do honest and responsible business; other businesspersons accept lower ethical standards, which make them to act less scrupulously in their business activities. On the other hand, all of them must seek profit, and this intrinsic purpose of business forces all of them to act in accordance with certain moral rules.

No matter their deep, inner motivation, both strategies – which, as a matter of fact, are complementary, not radically antagonistic – reach the same practical conclusion: making long-term and constant profit is incompatible with a greedy and irresponsible behaviour in dealing with consumers, employees, suppliers, creditors, or even competitors. On the contrary, a good businessperson – meaning one that makes a good profit out of his or her activities – is the one who never forgets about the legitimate interests of stakeholders, striving to fulfil their expectations. However, as Aaron Feuerstein's story shows, a responsible management should never forget that its primary duty is to run a company profitably. As a confirmation of Milton Friedman's doctrine, a financially poor management reduces to zero the capacity of a corporation to assume any social, ethical or philanthropical responsibility, as this final case perfectly illustrates.

CONTROL DATA CORPORATION: PHILANTHROPY v. EFFICIENCY

Control Data Corporation (CDC) was a high-tech company manufacturing computers and computer peripherals, and providing computer services. The major markets for CDC's computers were federal and state governments, educational institutions, and industrial companies. CDC was also a major supplier for space, defence, nuclear,

and weather systems. Its computer service business included planning, accounting, and administrative systems for large and small businesses. The peripheral products division supplied products to other computer manufacturing concerns.

CDC was also a company with a social conscience. William C. Norris, the founder and long time chair of the company, advocated a philosophical synthesis of capitalism and social consciousness. Consequently, he spent a good deal of his time and company assets on ventures far removed from the computer business such as training the jobless, helping to revitalize disadvantaged communities, and supporting small businesses. Norris tried to ingrain in all his employees the idea that addressing society's needs can be a profitable business opportunity.

Growing out of this philosophy, the specific programs that the company had implemented to address these needs included the building of manufacturing plants in economically depressed inner-city areas. That served the interests of each community by revitalizing urban areas and providing a path for disadvantaged persons to enter the mainstream of society, and developing a computer-based educational program called PLATO to address the need for better, more readily available, and lower-cost education throughout the world.

The company tried to find problems where a profit could eventually be made and where there was a congruence between traditional business objectives and the interests of society. It believed that the foregoing social ills should not be viewed as problems but as opportunities for business. It should be noted that Control Data did not have a formal contributions program as do most major corporations. Consequently, it did not see its involvement in social problems as a philanthropic effort but as a normal business opportunity that had risks but also had profit-making opportunities. Thus, the company did not try to project the image of a do-gooder, but wanted to be seen as a company that expanded its horizons to reach out and embrace other opportunities that most business organizations ignored.

However, CDC experienced financial difficulties in the 1980s because of an industrywide slump in the computer, office, and equipment supplies markets. Its 1985 annual statement showed a charge of \$130.2 million on the peripheral products group after a loss of \$269.6 million on \$3.69 billion in revenues. The company was also under a class-action suit from shareholders for misrepresenting the financial

health of the company. Many analysts blamed Norris for the company's financial difficulties for sidetracking it on ventures that distracted management, diluted resources, and left the company's core businesses vulnerable.

In 1986, Norris was replaced as CEO by Robert M. Price, who immediately began restructuring the company. Price slashed employment by 25 percent from 1985 levels, eliminating nearly half of top-management jobs in the process. He sold off 82 percent of Commercial Credit Corporation, the company's financial services subsidiary. He also cut back on many of the social projects that Norris had started. The aim of this restructuring was to focus on the company's computer manufacturing, disk drive, and service business, which brought in 95 percent of revenues.

Price changed the priorities of the company, and in the process began to change the culture of the company from one of seeing the company as a tool to meet society's unmet needs to a more traditional business-driven culture. The effort seemed to pay off financially, as CDC earned more than \$75 million in 1987 after losing \$832 million during the previous two years. Its disk drive business became profitable again and its 89 percent owned subsidiary, ETA Systems, delivered the first of its new supercomputers. After technically defaulting on some bank loans in 1985, in 1987 the company had \$300 million in cash and marketable securities.²⁸

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